

Exhibit AAA

12/01/16 AM

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1

09:31:54 1 Judge Kennelly, December 1, 2016.

09:33:33 2 THE COURT: Trial.

09:33:49 3 THE CLERK: Case number 10 C 1168.

09:33:54 4 MR. ART: Steve Art, Anand Swaminathan, Candace
09:33:58 5 Gorman for the plaintiff.

09:33:59 6 MR. BURNS: Good morning, your Honor. Terry Burns,
09:34:01 7 Dan Noland, Paul Michalik on behalf the City of Chicago and
09:34:04 8 Joseph Murphy.

09:34:05 9 THE COURT: First of all.

09:34:06 10 MR. KULWIN: Hello, your Honor.

09:34:07 11 THE COURT: I'm sorry.

09:34:08 12 MR. KULWIN: It's okay. Shelly Kulwin, Rachel Katz
09:34:13 13 on behalf of defendant O'Callaghan.

09:34:14 14 THE COURT: First of all, we have a little table
09:34:17 15 that's on wheels, so we can move it if necessary, there is a
09:34:20 16 screen up here which is the equivalent of the witness screen
09:34:23 17 and then we got a better -- the thing was kind of cutting in
09:34:26 18 and out yet, so I have a better wireless mic. So if we need
09:34:30 19 to move that, it's fine. It's on wheels. We will just kind
09:34:36 20 of sort that out when we get it.

09:34:38 21 That's number one. I've got I think everything that
09:34:42 22 everybody filed on this witness protection issue, and there's,
09:34:47 23 I guess there's different issues for different witnesses, so I
09:34:51 24 want to just -- because we got such a late start with the jury
09:34:54 25 yesterday, at the moment I just want to deal with it on

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12/01/16 AM

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2

09:34:59 1 Mr. Murphy, so that will be paragraph 7 of the -- paragraph 5
09:35:04 2 of the defendants' proffer and paragraph 7 of the plaintiff's
09:35:09 3 response to that.

09:35:10 4 So am I right that -- Mr. Kulwin, do you have or
09:35:32 5 Mr. Burns, do you have your submission in front of you guys
09:35:35 6 there?

09:35:35 7 MR. KULWIN: Yeah.

09:35:36 8 THE COURT: Paragraph 5, am I right that paragraphs 1
09:35:41 9 through 5 have basically already come in for Mr. Murphy or
09:35:46 10 not?

09:35:51 11 MR. BURNS: Page 5.

09:35:53 12 MR. KULWIN: Did it already come in through
09:35:55 13 Mr. Murphy?

09:35:56 14 THE COURT: I don't remember.

09:35:59 15 MR. KULWIN: No.

09:35:59 16 THE COURT: It hasn't come in through his examination
09:36:01 17 yet.

09:36:02 18 MR. ART: My memory is he got most of items 1 through
09:36:06 19 5 of defendants' proffer already in.

09:36:11 20 THE COURT: The way I am reading the reply filed by
09:36:13 21 the plaintiff is that at this point there's really no
09:36:17 22 objection to Mr. Murphy testifying to items 1 through 5 is
09:36:22 23 that right?

09:36:22 24 MR. LOEVY: We have some confusion. Are you asking
09:36:26 25 whether we covered this already with Murphy?

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12/01/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

3

09:36:28 1 THE COURT: No, I am asking the question that I am
09:36:31 2 asking. I'm looking at the response, the reply that was filed
09:36:34 3 last night, paragraph 7. With respect to paragraph 5,
09:36:38 4 plaintiff has no objection to defendant Murphy telling the
09:36:42 5 story about the arrest of Mr. Beseth and Mr. Swano, items 1
09:36:46 6 through 6. You are okay with that?

09:36:48 7 MR. LOEVY: Yes, your Honor. I understand now.

09:36:50 8 THE COURT: You have an objection to the rest of it,
09:36:53 9 7, 8, and 9.

09:36:55 10 MR. ART: Yes.

09:36:57 11 THE COURT: That's the way I'm reading it.

09:36:59 12 MR. LOEVY: Got it.

09:36:59 13 THE COURT: Actually, there isn't a 9. I am not
09:37:02 14 seeing 9. It's just 7 and 8.

09:37:04 15 MR. ART: Yes, that's my mistake.

09:37:06 16 THE COURT: What you're telling me on that is that I
09:37:09 17 made a ruling, it's document No. 550, which I have to pull out
09:37:14 18 here, before the previous trial that that was inadmissible.
09:37:22 19 So on the defense side, do you agree or disagree that I made
09:37:25 20 that ruling?

09:37:28 21 MR. BURNS: Just one moment, your Honor.

09:37:33 22 MR. KULWIN: You are talking --

09:37:36 23 THE COURT: Items 7 and 8. The plaintiff is saying
09:37:38 24 that I made a ruling on that in document 550 prior to the
09:37:45 25 previous trial. Document 550 is an order dated March the 9th

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09:38:10 1 of 2014.

09:38:11 2 MR. ART: Your Honor, the particular parts of that
09:38:15 3 order we're referring to are on our response on page 2, at the
09:38:19 4 top of page 2.

09:38:21 5 MR. BURNS: Judge, maybe I could obviate some of the
09:38:24 6 discussion as at least as Mr. Murphy is concerned.

09:38:28 7 THE COURT: Go for it.

09:38:29 8 MR. BURNS: Mr. Murphy will testify as to the events
09:38:31 9 that occurred at the playground.

09:38:34 10 THE COURT: You said at the playground?

09:38:36 11 MR. BURNS: At the playground.

09:38:37 12 THE COURT: That's the Swano incident.

09:38:38 13 MR. BURNS: That's this incident in the paragraph.

09:38:41 14 He is not going to be testifying as to intimidation. He is
09:38:44 15 going talking about what happened when he went there. He did
09:38:47 16 receive a call, went to that location, found the two children
09:38:51 17 there, found Beseth, found Swano, talked to them, asked what
09:38:55 18 they had said, but he is not getting into a discussion that
09:38:59 19 they were intimidating, that they were threatening, that they
09:39:02 20 were saying things. So it's not intended for that purpose,
09:39:05 21 your Honor if that helps.

09:39:07 22 MR. ART: I think we have agreement with what
09:39:09 23 Mr. Burns is saying and that is what's covered in paragraphs 1
09:39:12 24 through 6.

09:39:13 25 THE COURT: So, yeah, that's what I'm talking about

12/01/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

5

09:39:16 1 paragraphs 7 and 8. It's the Jean Ball thing and the.

09:39:22 2 MR. ART: Morris relocation.

09:39:23 3 THE COURT: The relocation.

09:39:25 4 MR. BURNS: In regard to Jean Ball, Jean Ball was
09:39:29 5 there. I think we heard yesterday that she is the wife of
09:39:32 6 James Speights who was a general in the El Rukns. That would
09:39:35 7 be the extent. We don't intend to go beyond that, your Honor.
09:39:39 8 That was already elicited through testimony.

09:39:41 9 THE COURT: Didn't that come out earlier in the
09:39:44 10 trial?

09:39:45 11 MR. LOEVY: There is no testimony that she is married
09:39:46 12 to James Speights which we don't even believe is true. There
09:39:50 13 is no foundation for that testimony.

09:39:52 14 THE COURT: I don't think it's contended that she is
09:39:53 15 married. Common law doesn't mean this is what happens I tell
09:39:57 16 people, she is not the common law wife, she is the common law
09:40:02 17 wife.

09:40:02 18 MR. LOEVY: The girlfriend I guess is what they are
09:40:05 19 saying.

09:40:05 20 MR. BURNS: We are going to, Mr. Murphy, the
09:40:08 21 testimony he gave yesterday, we are not going beyond. If
09:40:11 22 there is a belief that we are going to say that she was there
09:40:14 23 threatening, we are not going to be saying that about Jean
09:40:18 24 Ball, the wife, the common law wife, the friend of James
09:40:22 25 Speights, however people wish to characterize it.

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12/01/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

6

09:40:27 1 THE COURT: I know there was testimony about this
09:40:28 2 earlier in the trial.

09:40:29 3 MR. KULWIN: There was.

09:40:30 4 THE COURT: From who?

09:40:33 5 MR. KULWIN: I believe it was from Earl Hawkins.
09:40:36 6 Incompetent read his 2009 trial testimony that James Speights
09:40:40 7 was a general.

09:40:40 8 THE COURT: No, but about this incident.

09:40:43 9 MR. KULWIN: About Jean Ball, that incident.

09:40:45 10 THE COURT: Maybe I just seen it in reports. Was it
09:40:48 11 in a report.

09:40:48 12 MR. KULWIN: No.

09:40:49 13 MR. LOEVY: I think they just keep saying it. It's
09:40:51 14 not testimony.

09:40:53 15 MR. KULWIN: I think it came out.

09:41:01 16 MR. LOEVY: You know where you saw it in the Beseth
09:41:03 17 deposition, isn't it true you brought along James Speights the
09:41:07 18 common law wife and he said I don't know who she is. That's
09:41:10 19 what you're probably thinking of.

09:41:12 20 THE COURT: Maybe that's where I read it because I
09:41:15 21 read it the night before last.

09:41:17 22 MR. BURNS: What we were talking about was admitted
09:41:19 23 in the last trial back in 2014, your Honor.

09:41:21 24 THE COURT: This person named ball was there and that
09:41:23 25 she was understood to be the common law wife.

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12/01/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

7

09:41:27 1 MR. KULWIN: We have it right here, it was on page
09:41:29 2 1534.

09:41:30 3 THE COURT: Do you have a date?

09:41:32 4 MR. KULWIN: It's Exhibit A to our filing.

09:41:36 5 THE COURT: Do you have a date?

09:41:49 6 MR. BURNS: I believe, Judge, the date --

09:41:50 7 THE COURT: What was the page, Mr. Kulwin.

09:41:52 8 MR. KULWIN: 1534.

09:41:55 9 THE COURT: Got it. I'm looking at it. Thanks. I
09:42:11 10 let it in at the last trial, I'm letting it in in this trial.

09:42:15 11 That leaves item number 8. What does Mr. Murphy have
09:42:20 12 personal knowledge of regarding Morris' relocation?

09:42:25 13 MR. BURNS: He, and this was in conjunction with the
09:42:29 14 state's attorney's office, asked to relocate Morris and his
09:42:31 15 family. They did that on a Friday night. The testimony I
09:42:36 16 anticipate that he will give in regard to intimidation was
09:42:38 17 that Morris felt that he and his family were threatened and
09:42:41 18 that's why the relocation occurred. I think Detective
09:42:45 19 O'Callaghan talked about this, your Honor.

09:42:46 20 THE COURT: I am just asking about Mr. Murphy.

09:42:48 21 MR. BURNS: I know --

09:42:49 22 THE COURT: Mr. Murphy is going to say that he put in
09:42:51 23 the request to the state's attorney's office.

09:42:53 24 MR. BURNS: They were requested by the state's
09:42:56 25 attorney's office.

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12/01/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

8

09:42:56 1 THE COURT: That he was asked by the state's
09:42:58 2 attorney's office to move Mr. Morris up to Milwaukee.

09:43:02 3 MR. BURNS: To the witness victim program. That's
09:43:04 4 how it came to him. He said we really were the ones to simply
09:43:08 5 then moved him.

09:43:09 6 THE COURT: And so the information he has about why
09:43:11 7 that happened came from the state's attorney's office?

09:43:13 8 MR. BURNS: Yes.

09:43:14 9 THE COURT: It's hearsay. You can't put that in. So
09:43:16 10 you can put in that he moved him up to Wisconsin but you can't
09:43:20 11 put in why because the statement from the state's attorney's
09:43:23 12 office is hearsay. That's it. I've ruled.

09:43:25 13 What else do I have to deal with before with he
09:43:27 14 start?

09:43:27 15 MR. ART: You just need to know that Mr. Wharrie is
09:43:30 16 going to go on. We are going to break in Mr. Murphy right
09:43:33 17 now.

09:43:33 18 MR. LOEVY: A couple things. The new ink despite.
09:43:38 19 We found a reference in the transcript. We resolved it. We
09:43:41 20 are going to handle it the way we handled it at the last
09:43:44 21 trial.

09:43:44 22 THE COURT: Look, if I don't have to worry about it,
09:43:49 23 don't bother me with it.

09:43:52 24 Let's get the jury.

09:43:52 25 MR. BURNS: Judge, if I say victim witness --

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09:43:54 1 THE COURT: Victim witness program is the official
09:43:55 2 name of it and you are okay with using that term, yes.

09:44:20 3 MR. NOLAND: Your Honor, may I speak with Mr. Murphy
09:44:22 4 about the Court's ruling?

09:44:23 5 THE COURT: Absolutely. That's fine.

09:44:25 6 MR. NOLAND: Thank you.

09:45:23 7 THE COURT: Everybody have a seat. I have a
09:45:26 8 technical issue I have to deal with.

09:45:45 9 (The jury enters the courtroom.)

09:45:46 10 THE COURT: Better today than yesterday. I am going
09:45:48 11 to give myself a pat on the back. You see there is a
09:45:51 12 different person up here. We are interrupting Mr. Murphy's
09:45:55 13 testimony. That's my decision so we can keep things moving.

09:45:58 14 (Witness sworn.)

09:46:06 15 THE COURT: Mr. Loevy, you can go ahead.

09:46:07 16 MR. LOEVY: Thank you, your Honor.

09:46:08 17 - - -

09:46:08 18 LAWRENCE WHARRIE, DIRECT EXAMINATION

09:46:08 19 BY MR. LOEVY:

09:46:09 20 Q. Would you state your name for the record?

09:46:10 21 A. Larry Wharrie.

09:46:11 22 Q. What do you do for a living, sir?

09:46:13 23 A. I am an attorney.

09:46:14 24 Q. You are formerly a prosecutor, correct?

09:46:17 25 A. Correct.

09:46:17 1 Q. In the Cook County state's attorney's office?

09:46:19 2 A. Yes.

09:46:19 3 Q. And you were one of the prosecutors who prosecuted the
09:46:21 4 murder case against Nate and Earl Hawkins back in '86,
09:46:25 5 correct, sir?

09:46:26 6 A. That's correct.

09:46:26 7 Q. Let's talk about some of the evidence that got presented
09:46:30 8 at that trial. I want to talk first about Randy Langston.

09:46:38 9 Now, you knew from the police reports that at one
09:46:42 10 point when initially interviewed in 1984, Randy said there was
09:46:46 11 one shooter, correct?

09:46:48 12 A. I believe that was in the report.

09:46:50 13 Q. All right. But by the time he testified at trial, he
09:46:53 14 identified two shooter, Nate and Hawkins, correct?

09:46:56 15 A. That's correct.

09:46:57 16 Q. By question for you, sir, is was Randy saying there were
09:47:01 17 two shooter by the time you started interacting with him or
09:47:05 18 were you someone who was part of the process where he went
09:47:09 19 from one to two?

09:47:10 20 A. I don't remember ever really talking to Randy Langston.
09:47:14 21 My partner handled Randy Langston.

09:47:16 22 Q. So you had no involvement in whatever shift happened from
09:47:19 23 one shooter to two, that had nothing to do with you?

09:47:22 24 A. I don't believe I talked with him to prepare him for
09:47:26 25 trial.

09:47:26 1 Q. So that had nothing to do with you, right?

09:47:28 2 A. That's correct.

09:47:28 3 Q. All right. Did you ever know that the notes from Randy
09:47:35 4 Langston's interview taken by Detective Bogdalek had gone
09:47:39 5 missing?

09:47:42 6 THE COURT: Do you want to put a time frame on that?

09:47:46 7 BY MR. LOEVY:

09:47:46 8 Q. Did you know back in '86 that there was a detective named
09:47:49 9 Bogdalek who had taken notes of the initial interview with
09:47:52 10 Randy Langston in '84?

09:47:53 11 A. I was aware of Bogdalek. He did write a report, maybe two
09:48:04 12 pages long. I don't know if that's what you're referring to.

09:48:06 13 Q. Who did you depend on to make sure that you got all of the
09:48:10 14 notes, the handwritten notes that under lied the reports?

09:48:12 15 A. We would order the reports throughout the normal course of
09:48:18 16 business.

09:48:18 17 Q. And then would you depend on the police department to make
09:48:22 18 sure that you had everything to turn over, right?

09:48:25 19 A. That's how it was done.

09:48:26 20 Q. As the prosecutor, it was your responsibility to turn over
09:48:28 21 all potentially exculpatory information, correct?

09:48:30 22 THE COURT: This is my tech guy. In case you're
09:48:33 23 wondering. Just pause for a second.

09:48:59 24 (Brief pause.)

09:49:00 25 THE COURT: Technical issue solved.

09:49:02 1 Go ahead, Mr. Loevy. Sorry for the interruption.

09:49:04 2 BY MR. LOEVY:

09:49:05 3 Q. I am being to move on to Gerald Morris. Did you interact

09:49:07 4 with Gerald Morris, sir?

09:49:08 5 A. I may have interacted. I just don't remember. I don't

09:49:13 6 think I put any of the eyewitnesses on for testimony. That's

09:49:16 7 my recollection.

09:49:17 8 Q. You have had a chance to review the transcripts and your

09:49:21 9 documents before you testified today, correct?

09:49:24 10 A. I don't know that I reviewed the trial transcript.

09:49:27 11 Q. But you have had -- you have taken some opportunity to

09:49:30 12 refamiliarize yourself with the facts as you knew them, right?

09:49:32 13 A. I did my best to refresh my memory from 30 some years ago.

09:49:38 14 Q. Do you remember whether when Gerald Morris first got to

09:49:42 15 the state's attorney's office, if he had the descriptions of

09:49:44 16 the men, one was tall, short, black, dark, braids, that kind

09:49:48 17 of level of description? Were you part of those discussions?

09:49:52 18 A. I believe there was a description in the police reports.

09:49:57 19 Q. A description by Gerald Morris?

09:49:59 20 A. I don't remember.

09:50:01 21 Q. All right. How about Richard Buckles, do you remember him

09:50:08 22 being located shortly before trial?

09:50:10 23 A. I remember the name Richard Buckles.

09:50:12 24 Q. All right. Do you remember how it was that after two

09:50:15 25 years after the murder, he showed up as an eyewitness?

09:50:21 1 A. I thought Richard Buckles was somebody who had been
09:50:30 2 interviewed early on.

09:50:31 3 Q. Let me show you Plaintiff's Exhibit 96. This is a police
09:50:37 4 report memorializing the Richard Buckles's witness. Would you
09:50:40 5 agree with that?

09:50:41 6 A. Yes.

09:50:58 7 Q. That's a report you would have had back then?

09:51:02 8 A. Yes.

09:51:03 9 Q. Does that refresh your recollection as to how Richard
09:51:05 10 Buckles turned up as a witness in April of '86 before the June
09:51:09 11 trial?

09:51:10 12 A. Yes, this would be his report.

09:51:13 13 Q. All right. Do you remember there being a two year gap
09:51:16 14 between this guy Richard Buckles was found?

09:51:18 15 A. Well, this report is in 1986, so that would appear to be
09:51:24 16 true.

09:51:25 17 Q. However, if you look at the first page, it's talking about
09:51:29 18 the witness interaction in April of '85, correct, in the text?

09:51:42 19 MR. LOEVY: Your Honor, permission to publish
09:51:46 20 defendants' 96.

09:51:47 21 THE COURT: All right. The jury can see it and
09:51:50 22 Mr. Wharrie should be able to see it on the screen too.

09:51:52 23 THE WITNESS: Yes, now that I read the report, I
09:51:55 24 think that's what I had read before coming here, that he had
09:51:59 25 been interviewed in 1985.

09:52:01 1 BY MR. LOEVY:

09:52:02 2 Q. So was it your understanding that Buckles actually was
09:52:05 3 located in '85, not in '86 as the prosecutor, was that the
09:52:11 4 understanding you had?

09:52:11 5 A. Well, yes, if this report is correct, yes.

09:52:17 6 Q. You depended on the Chicago Police Department to give you
09:52:19 7 the accurate information, correct?

09:52:20 8 A. Correct.

09:52:20 9 Q. But do you have any memory at all about a witness showing
09:52:23 10 up at the last minute, Richard Buckles? Either you do or you
09:52:27 11 don't?

09:52:27 12 A. I'm sorry, I don't.

09:52:29 13 Q. All right. Now, do you remember, this is Plaintiff's
09:52:34 14 Exhibit 84-1 did anybody ever give you a document
09:52:41 15 memorializing --

09:52:42 16 THE COURT: Hold it still there.

09:52:43 17 MR. LOEVY: Sure. This is Plaintiff's Exhibit 84-1.

09:52:50 18 THE COURT: Do you want to slide it up so he can see
09:52:52 19 the top?

09:52:53 20 BY MR. LOEVY:

09:52:53 21 Q. This is a homicide lineup on May 18th, 85 signed by
09:53:00 22 Sergeant Murphy of the Hawkins lineup. Do you see that, sir?

09:53:03 23 A. Yes.

09:53:04 24 Q. Do you remember ever being told that witnesses in the case
09:53:07 25 had identified a guy named Ray Ferguson instead of Earl

09:53:11 1 Hawkins?

09:53:11 2 A. No, I do not.

09:53:13 3 Q. That's something that would have stuck in your memory,

09:53:15 4 right?

09:53:15 5 A. Correct.

09:53:16 6 Q. And can you state with a high degree of certainty that you

09:53:21 7 never saw a document that Earl Hawkins was not identified?

09:53:25 8 A. That's correct.

09:53:28 9 Q. All right. Your theory of the case was that Earl Hawkins

09:53:36 10 was one of the two shooter, correct?

09:53:38 11 A. Correct.

09:53:42 12 Q. How many witnesses did you and your partner put on the

09:53:45 13 stand that claimed to have seen Earl Hawkins come out of the

09:53:49 14 breezeway, shoot him and run away?

09:53:50 15 A. At the trial?

09:53:54 16 Q. Yes, sir.

09:53:55 17 A. I don't remember. I think there was a couple.

09:53:56 18 Q. Randy, Gerald and Richard all said that they saw Earl

09:54:01 19 Hawkins do the shooting, correct?

09:54:02 20 A. I'll take your word for it.

09:54:05 21 Q. Those were the three guys.

09:54:07 22 A. Okay.

09:54:07 23 Q. But you do remember eyewitnesses came to the court and

09:54:10 24 pointed at Earl as the shooter, correct?

09:54:13 25 A. Correct.

09:54:13 1 Q. Did you have faith that those were legitimate
09:54:16 2 identifications?
09:54:17 3 A. Yes.
09:54:18 4 Q. And did you place your faith in the police department to
09:54:21 5 make sure that those were properly procured?
09:54:24 6 A. Yes.
09:54:24 7 Q. Did any witness or do you have any memory of Earl Hawkins
09:54:30 8 having been a suspect in the case before Anthony Sumner in May
09:54:34 9 of '85 put him into the crime, do you remember that at all?
09:54:37 10 A. Earl Hawkins?
09:54:42 11 Q. Yeah.
09:54:43 12 A. I don't think so. I don't remember.
09:54:48 13 Q. Your understanding of the case was always that it was a
09:54:51 14 cold case until one day Anthony Sumner supposedly said, he got
09:54:56 15 caught and he said it was me -- it was Earl Hawkins, two guys
09:55:00 16 from Evanston and myself, right?
09:55:02 17 A. Correct.
09:55:02 18 Q. That's how you understood it?
09:55:03 19 A. Correct.
09:55:03 20 Q. You never knew or to this day didn't know that Earl
09:55:07 21 Hawkins was a suspect before Sumner said that, did you?
09:55:09 22 A. I don't believe so.
09:55:12 23 Q. Because that would have changed the dynamic of the case,
09:55:16 24 wouldn't it have?
09:55:17 25 A. Well, I don't know what you mean.

09:55:20 1 Q. In other words, if law enforcement was saying to Sumner we
09:55:25 2 know it was you and Earl, that would have been different than
09:55:27 3 the theory you presented in court, right?

09:55:29 4 A. Yeah, I didn't know anything about Earl Hawkins.

09:55:33 5 Q. That would have been different than the theory you all
09:55:36 6 presented, right?

09:55:36 7 A. Correct.

09:55:37 8 Q. All right. Did you know that in 1984 -- well, I'll strike
09:55:45 9 that. I'll come back.

09:55:47 10 Now, one part of the case, the reason why the
09:55:54 11 eyewitnesses were looking at Nate's photo was because Sumner
09:55:59 12 claimed that Nate confessed, right?

09:56:01 13 A. Correct.

09:56:02 14 Q. And do you remember from looking at the reports what
09:56:04 15 Sumner was claiming the alleged confession was?

09:56:07 16 A. From Nathson Fields?

09:56:10 17 Q. Right.

09:56:13 18 A. He confronted Nathson Fields about it and Fields
09:56:16 19 acknowledged that it was a good exercise.

09:56:17 20 Q. It was a good exercise, right?

09:56:20 21 A. Correct.

09:56:20 22 Q. That was the words that was in the supposed confession?

09:56:23 23 A. That's what I recall.

09:56:25 24 Q. All right. And this confession supposedly was heard by
09:56:29 25 Anthony Sumner alone just the two of them, right?

09:56:33 1 A. I believe you're right.

09:56:34 2 Q. Take a look at the criminal trial, page 437 and see if
09:56:38 3 that confirms your memory.

09:56:48 4 MR. KULWIN: Could we have a page, please?

09:56:50 5 THE COURT: He just said 437.

09:56:52 6 MR. KULWIN: Thank you, your Honor.

09:57:01 7 BY MR. LOEVY:

09:57:02 8 Q. It's true, is it not, Mr. Wharrie, that the case you put
09:57:05 9 on was Mr. Sumner testified that he was alone with Fields,
09:57:11 10 just the two of them, Fields pulled him away in private to say
09:57:16 11 it was a good exercise?

09:57:17 12 A. Correct.

09:57:17 13 Q. And obviously Anthony Sumner had a motive to lie at the
09:57:20 14 time he was giving that testimony, right?

09:57:22 15 MR. KULWIN: Objection, Judge.

09:57:23 16 THE COURT: Overruled.

09:57:25 17 THE WITNESS: Not that I know of.

09:57:27 18 BY MR. LOEVY:

09:57:27 19 Q. Well, he had been arrested for murdering, among other
09:57:30 20 people, Joe White and Dee Eggars Vaughn, right?

09:57:33 21 A. Correct.

09:57:33 22 Q. And he was making deals to save himself, correct?

09:57:35 23 A. There was initially there was not a deal with him.

09:57:39 24 Q. All right. But was he testifying without a deal?

09:57:42 25 A. Initially, he was giving information without a deal

09:57:48 1 because we didn't know what he was involved in.

09:57:51 2 Q. When he gave up his good friend Earl Hawkins and said my
09:57:57 3 friend Earl Hawkins committed a murder, was he being given
09:58:01 4 assurances that he would get benefits in return?

09:58:04 5 A. When he was talking about Earl Hawkins?

09:58:08 6 Q. Yeah. Focusing on the time period when Anthony said, all
09:58:12 7 right, all right, police, my buddy Earl Hawkins committed the
09:58:16 8 murder with two guys from Evanston and my landlord?

09:58:19 9 MR. KULWIN: Objection, argumentative.

09:58:21 10 THE COURT: Overruled.

09:58:22 11 BY MR. LOEVY:

09:58:22 12 Q. At that point in time, was it your understanding as the
09:58:25 13 prosecutor that Sumner was being promised benefits in exchange
09:58:29 14 for cooperating?

09:58:29 15 A. I don't believe that there was still an agreement with
09:58:33 16 him. We told him that we would give him consideration, so I
09:58:38 17 guess to a certain extent, you know, there was some agreement,
09:58:41 18 but I don't think there was anything set in terms of what his
09:58:44 19 agreement would be.

09:58:44 20 Q. All right. But as far as evidence as a prosecutor, he has
09:58:49 21 a motivation to lie under those circumstances, correct?

09:58:52 22 MR. KULWIN: Objection, asked and answered.

09:58:53 23 THE COURT: Overruled. Please answer.

09:58:57 24 THE WITNESS: I wouldn't call it a motivation to lie.

09:59:01 25 I would say that that's something that you take into

09:59:03 1 consideration, though.

09:59:04 2 BY MR. LOEVY:

09:59:05 3 Q. Sure. And that's why you have to corroborate it with
09:59:08 4 things like eyewitnesses, right?

09:59:09 5 A. Correct.

09:59:10 6 Q. And there was something unusual about, though, the
09:59:15 7 circumstances by which Mr. Sumner's claim that Nate confessed
09:59:20 8 was documented, wasn't there?

09:59:23 9 MR. BURNS: Objection, form of the question.

09:59:24 10 THE COURT: Rephrase the question.

09:59:25 11 BY MR. LOEVY:

09:59:25 12 Q. Do you remember anything unusual about the circumstances
09:59:28 13 under which Mr. Fields' supposed confession to Sumner was
09:59:33 14 documented?

09:59:34 15 A. I don't remember.

09:59:36 16 Q. All right. Take a look at Defendant's Exhibit 70. Is
09:59:40 17 this a document you remember? This is the notes, the GPR
09:59:44 18 notes dated May 14th, 85, submitted May 14th, 86, of a
09:59:51 19 conversation Joe Murphy had with Anthony Sumner.

09:59:56 20 My first question is you are looking at it, do you
09:59:59 21 remember this?

09:59:59 22 A. Yes.

09:59:59 23 Q. All right. Now, take a moment and refamiliarize yourself
10:00:04 24 with it. Mr. Wharrie, I am not going to ask you questions
10:00:39 25 about the substance. Can I ask you a question?

10:00:41 1 A. Sure.

10:00:41 2 Q. Having refamiliarized yourself generally with what this
10:00:44 3 document is, do you have a recollection that there was an
10:00:46 4 issue about the memorialization of the confession that Nate
10:00:55 5 supposedly gave to Sumner?

10:00:56 6 A. Not, no -- not then.

10:00:59 7 Q. Wouldn't you have expected that there would be a police
10:01:04 8 report memorializing that Sumner was claiming Nate confessed?

10:01:08 9 A. There could be.

10:01:11 10 Q. All right. When you dealt with the Chicago Police
10:01:13 11 Department a lot, right?

10:01:14 12 A. Correct.

10:01:15 13 Q. Was it your experience with the practices of the Chicago
10:01:19 14 Police Department that if someone was going to claim that
10:01:21 15 another man confessed to murder, that the police department
10:01:23 16 might not make a police report? I'm saying the Chicago Police
10:01:28 17 Department.

10:01:28 18 A. I would think they would.

10:01:29 19 Q. Okay. Was it the practice of the Chicago Police
10:01:33 20 Department in your experience to create police reports when
10:01:37 21 one man was claiming another man confessed to a murder in a
10:01:40 22 capital murder case?

10:01:41 23 MR. BURNS: Objection, foundation, your Honor.

10:01:43 24 THE COURT: Overruled, given the limitation to his
10:01:49 25 own experience when he was prosecuting cases.

10:01:52 1 THE WITNESS: I'm sorry. Could you repeat that?

10:01:54 2 BY MR. LOEVY:

10:01:54 3 Q. You prosecuted a lot of cases, right?

10:01:56 4 A. Correct.

10:01:56 5 Q. And you had a lot of cases involving the Chicago Police

10:01:58 6 Department, correct?

10:01:59 7 A. Correct.

10:01:59 8 Q. Was it the practice of the Chicago Police Department

10:02:03 9 ordinarily to create police reports when one man was claiming

10:02:07 10 another man confessed in a capital murder case?

10:02:10 11 A. Correct.

10:02:10 12 Q. Okay. Can you ever think of an exception in your entire

10:02:13 13 career where in a capital murder case based around a

10:02:17 14 confession, there was no police report?

10:02:19 15 A. Well, this is a police report here.

10:02:22 16 Q. Well, I'm talking about a supp report that is official,

10:02:27 17 signed, and submitted. You understand the difference, right?

10:02:29 18 A. I do.

10:02:29 19 Q. This is a GPR. This is a notes, correct?

10:02:32 20 A. Correct.

10:02:33 21 Q. So now let's get back to my question. Have you ever in

10:02:37 22 your entire career prosecuted another case, a murder case with

10:02:40 23 a confession where there wasn't an official police report

10:02:43 24 documenting a confession?

10:02:44 25 MR. BURNS: Objection, your Honor?

10:02:45 1 THE COURT: Overruled.

10:02:46 2 THE WITNESS: I can't say that I recall ever.

10:02:48 3 BY MR. LOEVY:

10:02:48 4 Q. That would be extraordinarily unusual, wouldn't it?

10:02:52 5 A. Like I said, I don't think I ever had that before, yes.

10:02:56 6 Q. That happened in this case, didn't it?

10:02:58 7 A. Yes, if this is the only statement. If this is the only
10:03:05 8 report that reflects that statement.

10:03:07 9 Q. All right. And this GPR notes, this does not get
10:03:11 10 submitted through records and date stamped, correct?

10:03:14 11 A. I am not sure what you're saying.

10:03:19 12 Q. Official police reports when they're created, they're
10:03:23 13 created by the end of tour of duty, correct?

10:03:26 14 A. Yes.

10:03:26 15 Q. And then they get submitted to records where they're date
10:03:30 16 stamped, correct?

10:03:30 17 A. Correct.

10:03:30 18 Q. Then they become part of the official file?

10:03:33 19 A. That's correct, I follow you.

10:03:34 20 Q. GPRs, not so much, right?

10:03:36 21 A. Correct.

10:03:37 22 Q. Did you have concerns that this GPR dated May 14th, 85,
10:03:44 23 but submitted May 14th, 86, was back dated after the fact?

10:03:48 24 A. I don't think I noticed that.

10:03:51 25 Q. It is true, is it not, that you cannot prosecute a murder

10:04:00 1 case without giving the other side some piece of paper
10:04:04 2 reflecting a confession if you're going to use a confession,
10:04:08 3 right?
10:04:08 4 A. You would have to give them everything.
10:04:10 5 Q. But let's say you wanted to have a murder trial and you
10:04:13 6 wanted to try Nate and say that Sumner said he confessed, you
10:04:16 7 couldn't put on that case without giving the defense some
10:04:19 8 piece of paper saying that he confessed, right?
10:04:21 9 A. If it existed, yes.
10:04:23 10 Q. Well, I mean, if the police department had done an
10:04:26 11 investigation and had supposedly taken a murder confession,
10:04:30 12 your job as the prosecutor would have been to give paper to
10:04:33 13 Nate saying somebody is claiming to have confessed, right?
10:04:36 14 A. Correct.
10:04:36 15 Q. So isn't it true that in April '86 in the lead up to
10:04:40 16 Nate's trial, you all realized that there was no paper
10:04:45 17 memorializing the supposed confession?
10:04:47 18 A. I don't recall. There was a gap where I was not there for
10:04:53 19 court every day.
10:04:54 20 Q. Isn't it true that this document that I showed you,
10:04:57 21 Defendant's Exhibit 70, wasn't produced to Nate until April of
10:05:02 22 '86 shortly before the murder trial?
10:05:03 23 A. Like I say, I don't know. I was reassigned out to the
10:05:08 24 south suburbs, so I didn't have anything to do with the file
10:05:12 25 for a period of time.

10:05:13 1 Q. All right. You did live the case for at least a year or
10:05:16 2 more, right?

10:05:16 3 A. Initially, I had the case.

10:05:24 4 Q. All right. That's what I'm getting at.

10:05:26 5 A. Yeah, initially, I had the case. That's correct. At some
10:05:30 6 point, I got transferred out of 26th and California to be the
10:05:35 7 supervisor out in the south suburbs, in Markham, I believe
10:05:39 8 that was the summer of '85.

10:05:40 9 Q. Weren't you one of the trial lawyers, though, at Nate's
10:05:45 10 trial?

10:05:45 11 A. I ended up coming back to try it.

10:05:47 12 Q. I see, so you had left and come back to try the case?

10:05:50 13 A. Right.

10:05:50 14 Q. Okay. In all of your interactions with this case, have
10:05:54 15 you ever heard of a man named Derrick Kees?

10:05:57 16 A. With this case?

10:05:58 17 Q. Yes.

10:05:59 18 A. Well, I know who Derrick Kees is.

10:06:02 19 Q. Right. But do you remember Derrick Kees being part of the
10:06:05 20 hit team?

10:06:06 21 A. On this case?

10:06:08 22 Q. Right.

10:06:09 23 A. No.

10:06:09 24 Q. In all of your interactions with Anthony Sumner, did you
10:06:17 25 interact with Anthony Sumner, by the way?

10:06:19 1 A. Yes.

10:06:19 2 Q. You debriefed him at some length, correct?

10:06:21 3 A. I would interview him after he was debriefed by the police
10:06:26 4 for the purposes of putting him in like a grand jury or for
10:06:30 5 testimony.

10:06:30 6 Q. You were that guy, right?

10:06:31 7 A. That's right.

10:06:32 8 Q. All right. So you had extensive interactions with Anthony
10:06:35 9 Sumner?

10:06:35 10 A. Early on, yes.

10:06:36 11 Q. And leaving aside the timing of it, you gave -- you
10:06:40 12 interviewed him and got information from him, right?

10:06:44 13 A. I pretty much had the information. I would talk to him to
10:06:50 14 prepare him for testimony.

10:06:51 15 Q. And then you put him on at the grand jury and then you put
10:06:55 16 him on at trial?

10:06:55 17 A. I put Anthony Sumner in the grand jury a couple times and
10:06:59 18 I put him on during the course of this trial.

10:07:01 19 Q. All right. So you -- based on that foundation of having
10:07:07 20 talked to Anthony Sumner, did Anthony Sumner ever tell you
10:07:10 21 that Derrick Kees, Earl Hawkins, Harry Evans, and himself were
10:07:15 22 part of a hit team to murder Fuddy Smith?

10:07:18 23 A. I never heard that.

10:07:19 24 Q. That's something memories aside you would know if you
10:07:22 25 heard that, wouldn't you?

10:07:23 1 A. Sure.

10:07:23 2 Q. Because Anthony Sumner always said he had nothing to do
10:07:25 3 with this murder, right?

10:07:27 4 A. This one here, yes, you're right.

10:07:28 5 Q. And Harry Evans had nothing to do with this murder, right?

10:07:32 6 A. That's correct.

10:07:32 7 Q. And Derrick Kees, you never even heard of as related to
10:07:37 8 this murder, correct?

10:07:37 9 A. Not to this one.

10:07:38 10 Q. Do you know at one point Derrick Kees started claiming
10:07:46 11 that he was part of the hit team?

10:07:48 12 MR. KULWIN: Judge, I am going to object.

10:07:53 13 Argumentative.

10:07:54 14 THE COURT: Rephrase the question.

10:07:54 15 BY MR. LOEVY:

10:07:55 16 Q. Whenever Derrick Kees said what he said, that was after
10:07:57 17 you were no longer involved, right?

10:07:59 18 A. I left the state's attorney's office in 1987. I don't
10:08:03 19 believe I had any contact with Derrick Kees.

10:08:06 20 Q. All right. Let's talk about the last area. You have
10:08:10 21 gotten some familiarity in the course of our litigation with
10:08:15 22 the street file, correct?

10:08:15 23 A. That's correct.

10:08:16 24 Q. This is Plaintiff's Exhibit 1, your Honor.

10:08:19 25 THE COURT: Okay.

10:08:19 1 BY MR. LOEVY:

10:08:25 2 Q. Now, you have had an opportunity be to look through it and
10:08:28 3 review it, correct?

10:08:29 4 A. Correct.

10:08:29 5 Q. You are quite sure, are you not, that this information,
10:08:33 6 this file -- let me strike that. This file was not available
10:08:38 7 to you back when you tried the capital murder case, correct?

10:08:41 8 A. That's correct.

10:08:42 9 Q. And the procedure was you would send a subpoena to the
10:08:47 10 police department for documents, right?

10:08:50 11 A. I think initially it would just be a matter of just
10:08:57 12 ordering the police report. I don't know that we would
10:09:01 13 subpoena it in the first instance.

10:09:03 14 Q. All right. But eventually -- first you'd ask for the
10:09:08 15 materials, right?

10:09:08 16 A. Correct.

10:09:08 17 Q. And then would you send a subpoena or you wouldn't?

10:09:11 18 A. In this case, I believe I saw that there was a subpoena
10:09:15 19 issued at some point.

10:09:16 20 Q. All right. So the state's attorney's office issued a
10:09:19 21 subpoena compelling the police department to produce all its
10:09:21 22 material?

10:09:22 23 A. Correct, it wasn't me, but somebody else did. I saw that.

10:09:26 24 Q. All right. And the reason that you want all the material
10:09:29 25 is because you have a constitutional duty to turn over all

10:09:33 1 exculpatory information to the criminal defendant, correct?

10:09:35 2 A. Absolutely.

10:09:35 3 Q. And that's something you took very seriously?

10:09:37 4 A. Yes.

10:09:38 5 Q. And as a prosecutor, you had no intention of trying a case

10:09:42 6 where the rules weren't abided by, right?

10:09:44 7 A. Correct.

10:09:46 8 Q. But you couldn't physically go to the police department

10:09:49 9 and get the stuff and find it in the files, right?

10:09:52 10 A. No, we had no access to it.

10:09:54 11 Q. Who did you depend on to make sure you got access to all

10:09:58 12 the material, the police department, right?

10:10:00 13 A. Yes.

10:10:01 14 Q. All right. At some point, Mr. Smeeton was raising an

10:10:09 15 objection that he wasn't getting the street file, wasn't he,

10:10:13 16 at the trial?

10:10:14 17 A. I believe that came up, yes.

10:10:20 18 Q. He was saying, look, all you've given me are eight pages

10:10:26 19 of benign GPRs from the date of the murder, I know there has

10:10:29 20 to be more. He was telling the judge that, right?

10:10:32 21 A. Correct.

10:10:32 22 Q. So you then specifically requested to the police

10:10:34 23 department, we have to turn this over, give me any street

10:10:37 24 files that exist, correct?

10:10:38 25 A. During the trial?

10:10:41 1 Q. Well, when Mr. Smeeton was complaining that he wasn't
10:10:43 2 getting the investigative materials, it became your
10:10:46 3 responsibility to answer the court, right?

10:10:48 4 A. Yeah, and I believe that's when somebody from my office
10:10:52 5 subpoenaed the records and I think it came back the same way
10:10:57 6 with the eight pages you were talking about.

10:10:59 7 Q. But not Plaintiff's Exhibit 1, right?

10:11:01 8 A. That's correct.

10:11:01 9 Q. But when the defense attorney complained, the judge looked
10:11:06 10 at you and said give them the file, right?

10:11:10 11 A. We didn't hold that there was any other file. It was
10:11:16 12 already subpoenaed. That was what was returned. What we had
10:11:22 13 -- we had what the defense had. We gave the defense what we
10:11:25 14 had.

10:11:25 15 Q. I understand. I am not blaming you. The judge, though,
10:11:28 16 as the prosecutor, looked to you, right?

10:11:30 17 A. Well, he would have -- he probably asked us if there was
10:11:35 18 anything else. If I was even there at the time. Like I say,
10:11:38 19 during these preliminary -- these day-to-day dates leading up
10:11:44 20 to the trial, I was not in the courtroom. I came back to
10:11:48 21 actually do the trial, so a lot of these preliminaries I don't
10:11:52 22 believe I was even present.

10:11:53 23 Q. All right. Did you interact with Detective O'Callaghan?

10:11:57 24 A. At one point?

10:12:00 25 Q. At any point.

10:12:01 1 A. He was -- he was the detective I believe on this case.

10:12:07 2 Q. And you put him on the stand to testify at the trial,

10:12:09 3 didn't you? You were the attorney?

10:12:11 4 A. I may have. I don't remember. Like I say, I haven't

10:12:14 5 reviewed a trial transcript.

10:12:15 6 Q. All right. And you also interacted with Sergeant Murphy,

10:12:19 7 correct?

10:12:19 8 A. That's correct.

10:12:19 9 Q. All right. After Mr. Smeeton alleged that he wasn't

10:12:24 10 getting the investigative materials, did you ask the police

10:12:27 11 officers with whom you interacted, hey, are there more

10:12:30 12 materials?

10:12:30 13 A. I don't remember. I'm sure we would have.

10:12:34 14 Q. I mean, you would have had to have, right?

10:12:36 15 A. If there was a request, if there's anything more, I'm sure

10:12:40 16 we would have done that.

10:12:41 17 Q. That would have been the protocol to talk to the police

10:12:43 18 officers and say is there anything more, right?

10:12:45 19 A. Correct.

10:12:46 20 A. All right. You didn't get -- although you don't remember

10:12:49 21 the conversations, you do know you didn't get anything more,

10:12:52 22 correct.

10:12:52 23 A. Did not get anything more.

10:12:53 24 Q. And you've now had a chance to review the material and

10:12:58 25 it's correct?

10:12:59 1 A. Yes.

10:13:00 2 Q. It being Plaintiff's Exhibit 1?

10:13:02 3 A. Well, I think so. I mean, I have been given what I
10:13:05 4 believe to be that.

10:13:06 5 Q. Yeah. In other words, I am not going to go through it
10:13:10 6 now, the jury has seen it, but you have no doubt that if this
10:13:13 7 had been made available to you, you would have turned it over
10:13:16 8 to Mr. Fields, right?

10:13:17 9 A. Absolutely.

10:13:17 10 Q. Because it is potentially exculpatory, correct?

10:13:19 11 A. Potentially.

10:13:20 12 Q. And it would have been your responsibility to turn it over
10:13:23 13 to Mr. Fields?

10:13:24 14 A. Correct.

10:13:24 15 Q. All right. There were?

10:13:38 16 MR. LOEVY: Your Honor, may I have a quick sidebar to
10:13:41 17 show you?

10:13:50 18 (The following proceedings were had at sidebar outside the
10:13:54 19 hearing of the jury:)

10:13:54 20 MR. LOEVY: I want to be on the careful side. This
10:13:56 21 is testimony that I'd like to read to him.

10:13:59 22 THE COURT: This is from the trial?

10:14:00 23 MR. LOEVY: Yes.

10:14:01 24 THE COURT: The '86 trial.

10:14:02 25 MR. LOEVY: The reason I brought it over is because

10:14:04 1 it wasn't in front of him.

10:14:05 2 THE COURT: It's not testimony.

10:14:06 3 MR. LOEVY: Exactly.

10:14:07 4 THE COURT: It's a discussion between the lawyers.
10:14:09 5 It starts right here?

10:14:10 6 MR. LOEVY: Yes.

10:14:10 7 THE COURT: Do you want to look over my shoulder?
10:14:17 8 It's a question about Derrick Benson?

10:14:20 9 MR. LOEVY: Right. And this is the --

10:14:22 10 THE COURT: I am looking at pages 157 and 158. Go
10:14:25 11 ahead. Tell me what you are going to tell me.

10:14:27 12 MR. LOEVY: The gist is that the judge says, I don't
10:14:28 13 care what you think, I just arrested your 11-year-old son
10:14:31 14 because he wasn't here, and what I'd like to suggest is
10:14:34 15 there's alternate reasons why people don't want to participate
10:14:38 16 in the court process other than threatening witnesses.

10:14:44 17 THE COURT: Let me process that for a second. Now
10:14:48 18 let me read it. Okay.

10:15:17 19 MR. KULWIN: Judge, the only admissibility of the
10:15:20 20 trial transcript is materiality. Other than that, it's pure
10:15:23 21 hearsay. All of these statements are pure hearsay. They are
10:15:28 22 not admissible. And he's trying to draw an argumentative
10:15:32 23 inference from it that doesn't exist. He doesn't know what's
10:15:35 24 going on in the mind of the mother, he doesn't know if she's
10:15:39 25 been threatened or not threatened. He doesn't know anything

10:15:44 1 any of that.

10:15:44 2 THE COURT: I don't think it's comparable enough.
10:15:46 3 I'm excluding it.

10:15:49 4 (The following proceedings were had in open court in the
10:15:49 5 presence and hearing of the jury:)

10:15:49 6 THE COURT: Okay. You can proceed.

10:15:51 7 MR. LOEVY: I have no further questions, your Honor.

10:15:57 8 THE COURT: Mr. Burns.

10:15:59 9 MR. BURNS: Thank you, your Honor.

10:16:09 10 - - -

10:16:09 11 LAWRENCE WHARRIE, CROSS-EXAMINATION

10:16:09 12 BY MR. BURNS:

10:16:28 13 Q. Good morning, Mr. Wharrie.

10:16:29 14 A. Good morning.

10:16:30 15 Q. So it's clear for us, would you tell us how long or when
10:16:35 16 you first became an assistant state's attorney and then tell
10:16:38 17 me when you left.

10:16:40 18 A. I started in the state's attorney's office in 1978 and I
10:16:45 19 left in August 1st, 1987.

10:16:50 20 Q. Now, in May of 1985, what was your assignment at that
10:16:57 21 time?

10:16:57 22 A. At that time, I was in the gang prosecution unit of the
10:17:02 23 state's attorney's office at 26th and California.

10:17:04 24 Q. And who was the chief of the unit?

10:17:08 25 A. Earn /AOE /TKAO*EB.

10:17:10 1 Q. Now, you said just so we can understand what happened, you
10:17:15 2 were involved, you told me, or you told the ladies and
10:17:18 3 gentlemen of the jury early on in this case, the Smith/Hickman
10:17:21 4 prosecution; is that correct?

10:17:23 5 A. That's correct.

10:17:23 6 Q. And you said at some point your position as a member of
10:17:27 7 the gang crimes unit at the state's attorney's office changed,
10:17:31 8 am I also correct?

10:17:32 9 A. That's correct.

10:17:33 10 Q. Where did you go? Were you still in the office?

10:17:36 11 A. I was still in the office. I received a promotion. I was
10:17:40 12 made the supervisor of the sixth municipal district out in
10:17:45 13 Markham and that was in I want to say approximately August of
10:17:50 14 1985, so shortly after this started, I went to Markham.

10:17:56 15 Q. Now, at the time the case was tried in 1986, that was June
10:18:01 16 of 1986; am I correct?

10:18:02 17 A. Correct.

10:18:03 18 Q. What was your position within the state's attorney's
10:18:06 19 office then?

10:18:07 20 A. I was still in Markham, I believe.

10:18:10 21 Q. And what does the responsibility entail being the
10:18:14 22 supervisor of the Markham state's attorney's office?

10:18:16 23 A. There's approximately 30 cities and villages on the south
10:18:23 24 side that makeup the sixth municipal district, any and all
10:18:27 25 cases misdemeanors and felonies would go to the Markham

10:18:34 1 courthouse. I supervised lawyers who were in about seven or
10:18:38 2 eight courtrooms from minor traffic and misdemeanors through
10:18:42 3 three felony courtrooms trying serious felonies.

10:18:46 4 Q. So from -- again, what was the start, August of 1985?

10:18:51 5 A. I believe it was August of '85 when I transferred to
10:18:55 6 Markham.

10:18:55 7 Q. All right. And from that time until the time that this
10:18:59 8 case started, did you remain in the position as the chief of
10:19:03 9 the state's attorney's office in the sixth municipal district,
10:19:07 10 Markham, Illinois?

10:19:08 11 A. Correct.

10:19:08 12 Q. Now, let me take you back in time, if I may.

10:19:11 13 You said that in June of 1985, that you were assigned
10:19:15 14 to the gang crimes unit; am I correct?

10:19:18 15 A. Correct.

10:19:18 16 Q. And in May of 1985, did you have occasion to be assigned
10:19:24 17 by Mr. /TKAO*EB, am I saying that name correctly?

10:19:28 18 A. Correct.

10:19:28 19 Q. So go to east Cleveland, Ohio?

10:19:32 20 A. That's correct.

10:19:33 21 Q. All right. And what was the purpose in why you were sent
10:19:37 22 to east Cleveland, Ohio?

10:19:40 23 A. Sergeant Brannigan was in east Cleveland, Ohio. They had
10:19:46 24 five people in custody believed to be El Rukns, one of whom
10:19:52 25 was James walker. He had a pending arrest warrant.

10:19:59 1 Q. Generally, then, just describe what your role was.

10:20:03 2 A. I was asked if I would go out there and see if -- to see

10:20:11 3 if there would be any statements taken from any of the five

10:20:13 4 people that were there.

10:20:14 5 Q. All right. Did you learn or come to learn that one of the

10:20:17 6 people that was there was an Earl Hawkins?

10:20:20 7 A. Correct.

10:20:21 8 Q. Was Earl Hawkins then detained or arrested or was he

10:20:25 9 ultimately released from east Cleveland, Ohio police

10:20:29 10 department?

10:20:29 11 A. He was released.

10:20:30 12 Q. And what about an Anthony Sumner, did you come to learn

10:20:35 13 that he was in at least detained by the east Cleveland police

10:20:40 14 department?

10:20:40 15 A. Correct.

10:20:41 16 Q. And that was following some type of raid in a home out in

10:20:44 17 east Cleveland, Ohio?

10:20:45 18 A. That's correct.

10:20:45 19 Q. Was Anthony Sumner held on an arrest warrant?

10:20:51 20 A. No.

10:20:52 21 Q. Were there any charges against Anthony Sumner?

10:20:55 22 A. No.

10:20:56 23 Q. Was Anthony Sumner free to leave at any time that he

10:21:00 24 wished?

10:21:00 25 A. In east Cleveland?

10:21:02 1 Q. Yes, sir.

10:21:02 2 A. I don't know if he was free to leave when they were
10:21:08 3 talking to him. I don't know if he was free to leave, but he
10:21:11 4 wasn't under arrest.

10:21:12 5 Q. He began to cooperate at that time, didn't he?

10:21:16 6 A. Correct.

10:21:16 7 Q. He was under no obligation at that time to cooperate is
10:21:22 8 that true?

10:21:23 9 A. Correct.

10:21:23 10 Q. In fact, the information that he provided to you was
10:21:26 11 unknown to at least the gang crimes unit or at least the
10:21:32 12 state's attorney's office; is that correct?

10:21:33 13 A. Correct.

10:21:33 14 Q. At that time once he agreed to cooperate, May 10th, 1985
10:21:41 15 in east Ohio, he said he wished to cooperate is that true?

10:21:45 16 A. At some point, yes.

10:21:47 17 Q. At some point that was over the time while still in east
10:21:50 18 Cleveland, Ohio; am I correct?

10:21:52 19 A. Correct.

10:21:52 20 Q. Did he turn to Chicago to your knowledge?

10:21:57 21 A. Yes.

10:21:57 22 Q. I am talking about Anthony Sumner?

10:21:58 23 A. Yes.

10:21:59 24 Q. And did he return to Chicago and then come to the state's
10:22:05 25 attorney's office?

10:22:05 1 A. Yes, the following Monday, which would have been May 13th,
10:22:12 2 he was brought to the Cook County state's attorney's office.
10:22:13 3 Q. And, again, this is after he indicated that he wished to
10:22:18 4 cooperate; is that correct?
10:22:20 5 A. He was cooperating regarding the one case of James walker.
10:22:27 6 Q. And did you come to learn that he actually was providing
10:22:31 7 additional information?
10:22:33 8 A. Sometime after he was brought back, he started providing
10:22:40 9 information on more cases.
10:22:42 10 Q. Now, were you involved in this matter involving Anthony
10:22:47 11 Sumner and the information he was providing?
10:22:49 12 A. I was involved.
10:22:52 13 Q. Was this a task force between the Chicago Police
10:22:58 14 Department, the Cook County state's attorney's office, and the
10:23:01 15 United States attorney office?
10:23:03 16 A. There were people.
10:23:05 17 Q. I'm sorry?
10:23:06 18 A. Yeah, there were people assigned from the Chicago Police
10:23:09 19 Department, yes.
10:23:09 20 Q. All right. Were you present when Anthony Sumner was
10:23:15 21 brought do the Cook County state's attorney's office on May
10:23:20 22 13th, 1985?
10:23:21 23 A. Yes.
10:23:21 24 Q. Were you present then the following day when he was also
10:23:27 25 present, again Anthony Sumner at the Cook County state's

10:23:31 1 attorney's office on May 14th, 1985?

10:23:32 2 A. Yes.

10:23:33 3 Q. And at that time was he being debriefed by Sergeant Murphy

10:23:38 4 of the Chicago Police Department?

10:23:40 5 A. Yes.

10:23:40 6 Q. And Sergeant Murphy was conducting interviews of him, to

10:23:44 7 your knowledge, about his knowledge of the El Rukns is that

10:23:47 8 true?

10:23:47 9 A. Correct.

10:23:48 10 Q. Were you present at times during the course of that day in

10:23:53 11 which these interviews were taking place?

10:23:55 12 A. I would talk to him from time to time.

10:23:58 13 Q. Talk to Anthony Sumner?

10:24:00 14 A. Correct.

10:24:00 15 Q. Was Mr. /TKAO*EB present during this time?

10:24:05 16 A. He would have been -- he would have been on the floor. I

10:24:09 17 don't know if he participated in any of those or not. I don't

10:24:15 18 remember.

10:24:15 19 Q. I'm not suggesting he conducted the interviews, but was he

10:24:18 20 present for at least portions of those interviews?

10:24:21 21 A. Well, he would have been present on the floor. He would

10:24:24 22 have known what was going on at the time with these

10:24:28 23 interviews.

10:24:29 24 Q. All right. And there was also, if I recall, isn't it

10:24:32 25 correct there was an attorney from the United States attorneys

10:24:39 1 office during the time of these interviews; isn't that
10:24:39 2 correct?
10:24:41 3 A. One of the assistant U.S. attorneys came over at some
10:24:45 4 point during that week, correct.
10:24:46 5 Q. And was that on May the 14th, 1985?
10:24:49 6 A. It could have been.
10:24:52 7 Q. May 14th, 1985, was the only day that Joseph Murphy
10:24:58 8 interviewed or debriefed, as it's been referred to, Anthony
10:25:03 9 Sumner; isn't that correct?
10:25:05 10 A. I believe so. I think he was only interviewed one or two
10:25:09 11 days at 26th Street.
10:25:12 12 Q. Now, you were asked testimony about your involvement in
10:25:17 13 the prosecution. You came back to prosecute the case against
10:25:22 14 Nathson Fields and Earl Hawkins; is that correct?
10:25:26 15 A. That's correct.
10:25:26 16 Q. And the theory of the prosecution was this was a gang
10:25:32 17 retaliation murders regarding or involving narcotics
10:25:37 18 trafficking; is that true?
10:25:38 19 A. That's correct.
10:25:38 20 Q. So at this point in time, there are some questions
10:25:46 21 relative to information that was available to you. Do you
10:25:51 22 recall that by counsel a short time ago?
10:25:53 23 A. Yes.
10:25:53 24 Q. And you told the ladies and gentlemen of the jury that you
10:25:57 25 were responsible for preparing Anthony Sumner to give

10:26:01 1 testimony at a trial?

10:26:03 2 A. Correct.

10:26:03 3 Q. You said your partner was that Randy Rueckert?

10:26:08 4 A. Correct.

10:26:08 5 Q. He was responsible, as I understood your testimony, for

10:26:11 6 preparing the witnesses, including Mr. Langston; is that

10:26:16 7 correct?

10:26:16 8 A. Correct.

10:26:17 9 Q. There was a question asked of you as to --

10:26:21 10 MR. BURNS: May I see Defendant's Exhibit 70, your

10:26:23 11 Honor, that was shown earlier?

10:26:30 12 THE WITNESS: I have some up here.

10:26:34 13 MR. BURNS: I think you are going to see things work

10:26:36 14 on the computer screen or the screen before you.

10:26:41 15 BY MR. BURNS:

10:26:42 16 Q. Do you see this, sir?

10:26:43 17 A. Yes.

10:26:43 18 Q. Tell the ladies and gentlemen of the jury what that is?

10:26:45 19 A. That's what they refer to as a general progress report.

10:26:50 20 Q. And does it say general progress report, I'm looking to

10:26:54 21 the upper left-hand corner, what does that say specifically

10:26:59 22 there?

10:26:59 23 A. General progress report.

10:27:04 24 Q. Beneath that?

10:27:05 25 A. Detective division/Chicago police.

10:27:08 1 Q. And if you continue below, offense classification, do you
10:27:18 2 see that?
10:27:18 3 A. Correct.
10:27:19 4 Q. This is a report that is generated by a member of the
10:27:24 5 Chicago Police Department to document the interview that he
10:27:28 6 had of Anthony Sumner on May the 14th, 1985; am I correct?
10:27:32 7 A. Correct.
10:27:33 8 Q. And this is the report that you had and was tendered as
10:27:38 9 part of the discovery to the defense team, including Mr.
10:27:43 10 Fields' attorneys, for the 1986 trial before Judge Maloney
10:27:47 11 isn't that correct?
10:27:48 12 A. Correct.
10:27:49 13 Q. Now, in regard to that -- I am going to keep that up there
10:27:53 14 for a moment. If we could look very briefly at the lower
10:27:57 15 portion. There is information contained in there and I know
10:28:06 16 you've looked at that earlier, but would you take a look at
10:28:11 17 that again?
10:28:13 18 A. Correct.
10:28:13 19 Q. That's highlighted. This is information Mr. Sumner was
10:28:17 20 providing about a conversation that he had previous to May
10:28:23 21 14th, 1985, with Nathson Fields about Mr. Fields' involvement
10:28:31 22 in the Smith/Hickman murders; is that correct?
10:28:32 23 A. That's correct.
10:28:33 24 Q. And there is a reference in there in the conversation, and
10:28:40 25 if you'd read that for us. It begins with, he told.

10:28:46 1 A. He told Fields that he.

10:28:48 2 Q. He being, excuse me, he being whom? Who is the he?

10:28:52 3 A. That would be Fields.

10:28:55 4 Q. Is that Sumner?

10:28:56 5 A. Sumner, I'm sorry. The he is Sumner.

10:28:59 6 Q. All right.

10:29:00 7 A. He told Fields that he had heard about the Fuddy shooting.

10:29:05 8 Q. And continue.

10:29:06 9 A. Fields at first smiled and then said, yeah, it was a good

10:29:11 10 exercise.

10:29:12 11 Q. And this is the report in which the information from

10:29:17 12 Anthony Sumner about this Smith/Hickman murders was documented

10:29:22 13 is that true?

10:29:23 14 A. Yes, that's correct.

10:29:24 15 Q. You were present, you told us, at times or throughout the

10:29:33 16 time that Anthony Sumner was present at the state's attorney's

10:29:36 17 office on May 14th, 1985, correct?

10:29:38 18 A. Say that again.

10:29:40 19 Q. Were you present during Mr. Sumner's interviews at the

10:29:44 20 state's attorney's office on May 14th, 1985?

10:29:48 21 A. Yes.

10:29:48 22 Q. The comment that you have just read, and I want referenced

10:29:55 23 again, yeah, it was a good exercise, did you hear that

10:29:58 24 statement made by Mr. Sumner on May 14th, 1985, when you were

10:30:04 25 present during his interview at the state's attorney's office?

10:30:08 1 A. Yes, I believe so.

10:30:10 2 Q. The prosecution theory was this was a gang retaliation
10:30:28 3 murders?

10:30:29 4 A. Correct.

10:30:29 5 Q. The hit team that was involved as part of your theory of
10:30:36 6 prosecution involved four people; am I correct?

10:30:39 7 A. Correct.

10:30:39 8 Q. Two of those people were George Carter and Nathson Fields;
10:30:45 9 is that correct?

10:30:45 10 A. Correct.

10:30:45 11 Q. And those were the two shooters who shoot and killed
10:30:53 12 Jerome Fuddy Smith and Talman Hickman is that also correct?

10:30:55 13 MR. LOEVY: Objection to the foundation, your Honor.
10:31:05 14 Talking about the theory of the case.

10:31:06 15 THE COURT: Rephrase the question. He wasn't
10:31:08 16 present.

10:31:10 17 BY MR. BURNS:

10:31:10 18 Q. On your theory of the case and the information that had
10:31:13 19 been gathered, was it the state's prosecution theory the two
10:31:20 20 shooters involved in the murder of Smith and Hickman were
10:31:25 21 Nathson Fields and George Carter?

10:31:29 22 A. No.

10:31:29 23 Q. Okay. What was the theory?

10:31:31 24 A. The theory was that it was Nathson Fields and Earl
10:31:37 25 Hawkins.

10:31:37 1 Q. And that was based on the information that you had
10:31:41 2 received to that point in time; is that correct?

10:31:44 3 A. That's correct.

10:31:45 4 Q. And there were two other individuals who were involved.
10:31:50 5 What were those person's names who were involved under the
10:31:53 6 theory of prosecution the state advanced?

10:31:55 7 A. Henry Andrews and George Carter.

10:31:58 8 Q. Thank you.

10:31:59 9 And before we leave -- before we leave Exhibit No.
10:32:14 10 70, if you could just take one more look at that, Mr. Wharrie,
10:32:19 11 was that report ever challenged by the defense during the
10:32:23 12 course of the trial in 1986?

10:32:29 13 MR. LOEVY: Objection to challenge, your Honor.

10:32:30 14 THE COURT: Sustained. It's vague.

10:32:35 15 BY MR. BURNS:

10:32:36 16 Q. Let me be more specific, was the report itself, Exhibit
10:32:38 17 No. 70, was it ever questioned as to when it was prepared
10:32:41 18 during the trial in 1986?

10:32:43 19 A. Not that I recall.

10:32:44 20 Q. Thank you.

10:32:48 21 Now, there was a question that was posed to you
10:32:56 22 relative to a lineup and a lineup involving a Mr. Earl
10:33:07 23 Hawkins. Do you remember that questioning a short time ago?

10:33:12 24 A. Correct.

10:33:12 25 Q. And I would like, if I may, to ask that Exhibit 57, let me

10:33:24 1 be specific as to the date, pages 19 and 20.

10:33:41 2 Are you able to see those?

10:33:42 3 A. I can see them, about you they are not very legible.

10:33:46 4 Q. Take a minute and draw it near.

10:33:54 5 THE COURT: Would it be easier if he had a hard copy
10:33:57 6 to look at maybe?

10:33:59 7 MR. BURNS: I can approach, if I may, your Honor.

10:34:01 8 THE COURT: Part of is just bad xeroxing.

10:34:16 9 MR. BURNS: May I approach, Judge?

10:34:18 10 THE COURT: Sure.

10:34:19 11 BY MR. BURNS:

10:34:25 12 Q. This is the same report.

10:34:53 13 A. Okay.

10:34:53 14 Q. Mr. Wharrie, am I correct that this two-page report that
10:35:03 15 you have just reviewed, Defendant's Exhibit 57, pages 19 and
10:35:08 16 20, is a supplemental or supplementary police report prepared
10:35:18 17 by members of the Chicago Police Department?

10:35:19 18 A. Correct.

10:35:19 19 Q. And is it in fact a report that references the lineup that
10:35:26 20 was conducted involving Earl Hawkins; is that correct?

10:35:26 21 A. Correct.

10:35:27 22 Q. It also referenced the fact that Earl Hawkins was
10:35:30 23 identified in that lineup on May 18th, 1985; is that correct?

10:35:34 24 A. Correct.

10:35:35 25 Q. Bear with me just for a moment, your Honor.

10:35:40 1 THE COURT: Okay.

10:35:42 2 (Brief pause.)

10:35:54 3 BY MR. BURNS:

10:35:56 4 Q. I would like to direct your attention now, if I may, you
10:36:04 5 said that you presented Anthony Sumner at trial before Judge
10:36:10 6 Maloney in June of 1986; am I correct?

10:36:13 7 A. Correct.

10:36:14 8 Q. And was it just before the trial started that the
10:36:19 9 defendants waived their right to a jury trial and elected to
10:36:23 10 proceed to a bench trial before Judge Maloney?

10:36:27 11 A. Correct.

10:36:27 12 Q. In regard to Anthony Sumner, during the time that you were
10:36:32 13 with him and prepared in terms of debriefing and asking what
10:36:37 14 he knew about the Smith/Hickman murders, did he ever tell you
10:36:40 15 he had ever been mistreated by any members of the Chicago
10:36:45 16 Police Department?

10:36:45 17 A. No.

10:36:45 18 Q. And were you confident based upon your interaction with
10:36:50 19 him when you saw him in east Cleveland as well as in the
10:36:52 20 state's attorney's office when he returned to Chicago that he
10:36:56 21 had not been mistreated?

10:36:57 22 MR. LOEVY: Your Honor, objection, opens the door.

10:36:59 23 THE COURT: Hang on a second. Well, if it does, it
10:37:07 24 does. I don't think there is anything objectionable about the
10:37:10 25 question. We will worry about what happens later. Go ahead,

10:37:14 1 you can proceed. Why don't you rephrase it, Mr. Burns.

10:37:17 2 MR. BURNS: Sure.

10:37:19 3 BY MR. BURNS:

10:37:20 4 Q. Based on your interaction with Mr. Sumner, were you
10:37:23 5 satisfied that there was no suggestion by him that he had been
10:37:29 6 mistreated by members of the Chicago Police Department?

10:37:32 7 A. Correct.

10:37:33 8 Q. Now, he testified at trial. And during the time that he
10:37:41 9 testified, you were the one who put him on the witness stand
10:37:43 10 and asked him questions?

10:37:45 11 A. Correct.

10:37:58 12 MR. BURNS: Judge, may I use the ELMO for the purpose
10:38:01 13 of this?

10:38:01 14 THE COURT: Sure.

10:38:05 15 BY MR. BURNS:

10:38:24 16 Q. Mr. Wharrie, I'm going to ask you a series of questions
10:38:27 17 with regard to the questioning of Mr. Sumner at the time of
10:38:30 18 the trial before Judge Maloney and the answers that he gave to
10:38:33 19 you. So if you would read along as we do this.

10:38:37 20 A. Do you want me to read it?

10:38:40 21 Q. I will read it for you. Please ensure that what I am
10:38:43 22 reading is accurate and that that was the testimony during the
10:38:47 23 1986 trial by Anthony Sumner, at least in relevant portion.
10:38:52 24 Is that agreeable?

10:38:54 25 THE COURT: Just go ahead.

10:38:56 1 MR. BURNS: Thank you, your Honor.

10:38:56 2 BY MR. BURNS:

10:38:58 3 Q. Question, your Honor. This would have been by you.

10:39:01 4 Mr. Sumner, I would like to direct your to on or about April

10:39:04 5 28, 1984. Were you familiar or did you have knowledge of a

10:39:08 6 shooting involving a Fuddy, a Jerome Smith and a Talman

10:39:16 7 Hickman?

10:39:16 8 "ANSWER: Yes.

10:39:23 9 "QUESTION: I want to direct your attention to

10:39:31 10 approximately two days after April 28th of 1984. Did you at

10:39:37 11 that time have any conversations with anybody with respect to

10:39:40 12 that shooting?

10:39:43 13 "ANSWER: Yes.

10:39:44 14 "QUESTION: Who did you talk to on that day? A couple

10:39:49 15 days after the shooting, who did you talk to?

10:39:53 16 "ANSWER: Earl Hawkins.

10:40:01 17 "QUESTION: Does Earl Hawkins have a nickname?

10:40:03 18 "ANSWER: Yes.

10:40:05 19 "QUESTION: What is his nickname?

10:40:08 20 "ANSWER: Monday sewer.

10:40:10 21 "QUESTION: And is that the name that he had within an

10:40:14 22 organization?

10:40:14 23 "ANSWER: Yes.

10:40:16 24 "QUESTION: How long had you known Earl Hawkins?

10:40:20 25 "ANSWER: About 12 years, 10 years.

10:40:25 1 "QUESTION: Do you see him in court today?

10:40:28 2 "ANSWER: Yes."

10:40:33 3 Continuing to the lower portion, question by you.

10:40:37 4 "QUESTION: Where did this conversation take place

10:40:39 5 between you and Mr. Hawkins a couple days after the shooting?

10:40:44 6 "ANSWER: At his house.

10:40:48 7 "QUESTION: Where did he live at that time?

10:40:51 8 "ANSWER: 6416 Kenwood.

10:40:57 9 "QUESTION: Is that a building that is owned and

10:41:00 10 operated by the El Rukns?

10:41:01 11 "ANSWER: Yes.

10:41:03 12 "QUESTION: On what floor of that building did this

10:41:07 13 conversation take place?

10:41:08 14 "ANSWER: Third floor.

10:41:11 15 "QUESTION: And who was present besides you and Mr.

10:41:15 16 Hawkins, if anybody, at that time?

10:41:17 17 "ANSWER: Just me and him.

10:41:20 18 "QUESTION: What do you recall saying to him and him

10:41:24 19 saying to you in that conversation relative to the shooting of

10:41:28 20 Fuddy two days earlier?

10:41:33 21 "ANSWER: He told me they had got Fuddy. They had seen

10:41:41 22 him -- rode around until they seen him and then as he was

10:41:45 23 walking towards the building, they parked the car, two guys

10:41:54 24 got out. They shot him, got back in the car, drove off.

10:41:59 25 "QUESTION: Did he tell you who they were?

10:42:03 1 "ANSWER: Yes.

10:42:05 2 "QUESTION: What did he -- excuse me. Who did he say
10:42:10 3 did it?

10:42:11 4 "ANSWER: Carter.

10:42:13 5 "QUESTION: What is Carter's first name, if you know?

10:42:17 6 "ANSWER: George.

10:42:18 7 "QUESTION: And where does George Carter live, or where
10:42:22 8 did he live on or about April 1984, if you know?

10:42:28 9 "ANSWER: He stay in Evanston.

10:42:31 10 "QUESTION: Who else did he say was involved out of
10:42:35 11 these four?

10:42:36 12 "ANSWER: S-u-d-d-l-e-m-a-n, Hank

10:42:41 13 Q. What is Suddleman's real name?

10:42:44 14 "ANSWER: Hank.

10:42:45 15 "QUESTION: What is Hank's last name?

10:42:47 16 "ANSWER: I don't know.

10:42:49 17 "QUESTION: Do you know where Hank was living in April
10:42:51 18 of 1984?

10:42:53 19 "ANSWER: Somewhere in Evanston.

10:42:56 20 "QUESTION: Who else was involved out of the four
10:43:00 21 people?

10:43:00 22 "ANSWER: And Fields, HUKM.

10:43:05 23 "QUESTION: What did you call him?

10:43:10 24 "ANSWER: HUKM.

10:43:17 25 "QUESTION: Can you spell that?

10:43:19 1 "ANSWER: H-u-k-a-m-.

10:43:23 2 "QUESTION: Do you know Fields?

10:43:24 3 "ANSWER: Yes.

10:43:25 4 "QUESTION: How long have you known Fields?

10:43:27 5 "ANSWER: About the same time, about 12 years.

10:43:29 6 "QUESTION: Do you know his first name?

10:43:32 7 "ANSWER: Yes.

10:43:33 8 "QUESTION: What is it?

10:43:34 9 "ANSWER: Nathson.

10:43:37 10 "QUESTION: Do you see him in court?

10:43:40 11 "ANSWER: Yes.

10:43:42 12 "QUESTION: Would you point him out?

10:43:44 13 "ANSWER: Right there."

10:43:49 14 Do you recall those questions and the answers by
10:43:53 15 Mr. Sumner during the trial in June of 1986?

10:43:58 16 A. Yes.

10:43:58 17 Q. Did you continue to ask further questions of him
10:44:06 18 beginning, question by Mr. Wharrie.

10:44:10 19 "QUESTION: Did Mr. Hawkins go into detail and describe
10:44:12 20 to you in this conversation how the shooting went down?

10:44:17 21 "ANSWER: Yes.

10:44:19 22 "QUESTION: And what was that? What did he say?

10:44:22 23 "ANSWER: They rode around until they seen him. And
10:44:27 24 then when they seen him, parked the car down the street.

10:44:30 25 "QUESTION: Did he tell you where they parked the car?

10:44:33 1 "ANSWER: Down the street.

10:44:35 2 "QUESTION: Did he tell you what happened after that?

10:44:39 3 "ANSWER: What happened after that?

10:44:41 4 "QUESTION: And they parked the car.

10:44:48 5 "ANSWER: Two guys got out. Carter and Fields got out

10:44:52 6 and met the guys. He walked up under the breezeway.

10:44:55 7 "QUESTION: And then what happened?

10:44:56 8 "ANSWER: Then they shot him. Then they got back in

10:45:00 9 the car and drove off."

10:45:03 10 Do you recall that testimony being given by

10:45:07 11 Mr. Sumner during the trial in June of 1986?

10:45:11 12 A. Yes.

10:45:12 13 Q. Question by Mr. Wharrie:

10:45:19 14 "QUESTION: Did Mr. Hawkins talk to anybody else just

10:45:21 15 prior to the shooting?

10:45:23 16 "ANSWER: Yes.

10:45:27 17 "QUESTION: And who was that?

10:45:31 18 "ANSWER: He said he had talked to Jeff.

10:45:33 19 "QUESTION: And who is Jeff?

10:45:37 20 "ANSWER: Jeff Fort.

10:45:39 21 "QUESTION: And who is Jeff Fort?

10:45:41 22 "ANSWER: The leader of the El Rukns.

10:45:42 23 "QUESTION: What did he tell you Jeff Fort told them?

10:45:46 24 "ANSWER: Told him don't be involved directly because

10:45:50 25 peoples in the neighborhood knew him, and get somebody else

10:45:54 1 that is not known in the neighborhood to do it."

10:45:59 2 Do you recall those questions and answers of

10:46:01 3 Mr. Sumner regarding a conversation he had with Earl Hawkins?

10:46:05 4 A. Yes.

10:46:05 5 Q. Now, continuing.

10:46:11 6 This was questioning by you of Mr. Sumner.

10:46:16 7 "QUESTION: Let's go back to 1983. Was Nathson Fields
10:46:21 8 well known in the area of 39th and Langley?

10:46:25 9 "ANSWER: No.

10:46:31 10 "QUESTION: Had Nathson Fields been in the area of 39th
10:46:34 11 and Langley or even in the area of Chicago for the time before
10:46:37 12 April of 1984?

10:46:40 13 "ANSWER: No.

10:46:46 14 "QUESTION: Now, the same day that you talked to Earl
10:46:49 15 Hawkins, approximately April 30th, 1984, did you also talk to
10:46:54 16 Nathson Fields on that day?

10:46:57 17 "ANSWER: Yes.

10:46:58 18 "QUESTION: And where did that conversation take place?

10:47:01 19 "ANSWER: 39th Street, in the Fort.

10:47:10 20 "QUESTION: On 39th, at the Fort, who is the Fort?

10:47:17 21 "ANSWER: The mosque, headquarters.

10:47:19 22 "QUESTION: The headquarters of what?

10:47:21 23 "ANSWER: The headquarters of the El Rukns.

10:47:23 24 "QUESTION: Who was present besides yourself and
10:47:25 25 Nathson Fields when you talked to him on that day?

10:47:29 1 "ANSWER: What, in the room where he was at?

10:47:34 2 "QUESTION: Yes. Was anyone else present besides you
10:47:37 3 and Fields when you were talking to him?

10:47:41 4 "ANSWER: No.

10:47:43 5 "QUESTION: Do you recall what you said to him and what
10:47:47 6 he said to you during the course of that conversation?

10:47:51 7 "ANSWER: Yes.

10:47:52 8 "QUESTION: What was said?

10:47:55 9 "ANSWER: I told him that I had heard about Fuddy
10:47:59 10 getting shot down in 39th Street and he had something to do
10:48:04 11 with it, and he said that, quote, it was a good exercise."

10:48:11 12 Do you recall that testimony being given during the
10:48:13 13 trial before Judge Maloney in June of 1986?

10:48:18 14 A. Yes.

10:48:19 15 Q. And that was testimony by Mr. Sumner, am I also correct?

10:48:23 16 A. Correct.

10:48:38 17 MR. BURNS: May I have just one moment, Judge?

10:48:41 18 THE COURT: Yes.

10:48:42 19 MR. BURNS: Thank you. (Brief pause. (.

10:49:10 20 MR. BURNS: Just one final question, if I may.

10:49:12 21 BY MR. BURNS:

10:49:12 22 Q. The information that was presented that we just read to
10:49:16 23 the ladies and gentlemen of the jury, that was the same

10:49:17 24 information that Mr. Sumner was telling you during the time

10:49:19 25 that you met with him in order to prepare to give testimony at

10:49:22 1 trial; is that correct?

10:49:23 2 A. Correct.

10:49:24 3 MR. BURNS: I have no further questions. Thank you,
10:49:26 4 your Honor.

10:49:26 5 THE COURT: Mr. Kulwin.

10:49:28 6 - - -

10:49:28 7 LAWRENCE WHARRIE, CROSS-EXAMINATION

10:49:28 8 BY MR. KULWIN:

10:50:03 9 Q. Mr. Wharrie, you said that you tried the Smith/Hickman
10:50:08 10 murder trial, double murder trial at 26th and California with
10:50:13 11 another person, correct?

10:50:14 12 A. Correct.

10:50:15 13 Q. And that was typical in the state's attorney's office at
10:50:20 14 that time, correct?

10:50:21 15 A. We usually tried all of them in pairs.

10:50:24 16 Q. Right.

10:50:25 17 It was a trial team?

10:50:28 18 A. Correct.

10:50:28 19 Q. And you'd split up the witnesses?

10:50:30 20 A. Correct.

10:50:31 21 Q. And one attorney would take some witnesses and the other
10:50:35 22 attorney would take others?

10:50:36 23 A. Correct.

10:50:36 24 Q. Usually?

10:50:38 25 A. Yes.

10:50:38 1 Q. Who was your trial partner on that case?

10:50:42 2 A. Randy Rueckert.

10:50:46 3 Q. And had you worked with him before?

10:50:48 4 A. Yes.

10:50:48 5 Q. Was he your trial partner in other cases as well, if you
10:50:54 6 recall?

10:50:54 7 A. I don't remember.

10:50:58 8 Q. Okay. Now, you said that Mr. Rueckert was handling the
10:51:03 9 eyewitnesses?

10:51:04 10 A. Correct.

10:51:05 11 Q. At any time did Mr. Rueckert ever come to you and say the
10:51:11 12 witnesses, the eyewitnesses have been threatened or coerced by
10:51:14 13 O'Callaghan, maybe we shouldn't use them?

10:51:17 14 MR. LOEVY: Objection, your Honor.

10:51:19 15 THE COURT: What's the basis?

10:51:20 16 MR. LOEVY: First of all, it's hearsay, second of
10:51:23 17 all, it's argumentative.

10:51:24 18 THE COURT: Overruled.

10:51:26 19 THE WITNESS: No.

10:51:26 20 BY MR. KULWIN:

10:51:29 21 Q. At any time -- now, you were asked some questions by
10:51:44 22 counsel, by both counsel about a hit team. Do you remember
10:51:47 23 those questions?

10:51:47 24 A. Yes.

10:51:48 25 Q. The word hit in your mind as an experienced gang

10:51:55 1 prosecutor and state's attorney means killing somebody,
10:51:57 2 correct?

10:51:58 3 A. Yes.

10:51:58 4 Q. It doesn't mean driving around thinking about it?

10:52:00 5 MR. LOEVY: Objection, your Honor.

10:52:01 6 THE COURT: Sustained.

10:52:05 7 BY MR. KULWIN:

10:52:06 8 Q. People who make a plan to go kill somebody, they enter no
10:52:09 9 a conspiracy to kill somebody, that's something that they do,
10:52:12 10 right?

10:52:12 11 A. Correct.

10:52:13 12 Q. But the actual people who do the shooting and go to the
10:52:17 13 shooting, they're guilty of murder, they're a hit team, right?

10:52:20 14 A. Correct.

10:52:21 15 Q. And in this case, there was never any question that the
10:52:37 16 actual hit team who did the shooting and the driving away
10:52:45 17 were, one of the shooter was Fields, right?

10:52:47 18 A. Correct.

10:52:48 19 Q. And there was Hawkins?

10:52:51 20 A. Correct.

10:52:52 21 Q. And there was Carter?

10:52:57 22 A. Yes.

10:52:59 23 Q. I'm standing in front of everybody. I apologize.

10:53:04 24 And then there was Andrews, right?

10:53:08 25 A. Right.

10:53:08 1 Q. Now, you just heard your presentation of Mr. Sumner's
10:53:18 2 testimony back in 1986 and you put him on the stand, right?

10:53:23 3 A. That's right.

10:53:26 4 Q. And he said that Hawkins told him that Carter?

10:53:30 5 MR. LOEVY: Objection, your Honor. This was covered
10:53:31 6 by Mr. Burns.

10:53:33 7 THE COURT: Sustained.

10:53:33 8 BY MR. KULWIN:

10:53:43 9 Q. Now, when you proceeded to trial on the Smith/Hickman
10:53:59 10 murder, you presented evidence that you believed was
10:54:04 11 sufficient to prove Nathson Fields guilty beyond a reasonable
10:54:08 12 doubt?

10:54:08 13 MR. LOEVY: Objection.

10:54:09 14 BY MR. KULWIN:

10:54:09 15 Q. That was your position, correct?

10:54:10 16 THE COURT: Basis?

10:54:11 17 MR. LOEVY: His opinion is not --

10:54:13 18 THE COURT: Sustained.

10:54:14 19 MR. KULWIN: Judge, if I could be heard on that. I'm
10:54:17 20 not asking necessarily whether that's true, his view of it is
10:54:22 21 important, relevant to probable cause. That's why it's
10:54:24 22 relevant.

10:54:25 23 THE COURT: I will see you at sidebar. The jury is
10:54:29 24 directed to disregard the attorney's comments.

10:54:36 25 MR. KULWIN: Yeah, I apologize.

10:54:38 1 (The following proceedings were had at sidebar outside the
10:54:39 2 hearing of the jury:)

10:54:39 3 THE COURT: So state the argument.

10:54:40 4 MR. KULWIN: The argument is, Judge, he is a
10:54:42 5 prosecutor, he believes the evidence at that point in time is
10:54:45 6 sufficient to be proof beyond a reasonable doubt. I want to
10:54:46 7 elicit from him that that's a higher standard.

10:54:49 8 THE COURT: It's an opinion on probable cause,
10:54:51 9 basically? It's an opinion that's relevant on the issue of
10:54:54 10 probable cause.

10:54:54 11 MR. KULWIN: Yeah, on the issue of probable cause.

10:54:56 12 THE COURT: What do you want to show me?

10:54:56 13 MR. ART: This is a motion in limine ruling ruling
10:54:56 14 that prohibiting the prosecutors from discussing the issues of
10:55:02 15 probable cause, the ultimate issues of materiality for
10:55:02 16 precisely the reasons the jury has to determine them on an
10:55:04 17 objective standard.

10:55:05 18 THE COURT: Document No. 550, 3/19/14, item 1C. Let
10:55:13 19 me read it to myself. Let me look at it. You should read it,
10:55:27 20 bottom of the previous page.

10:55:52 21 MR. KULWIN: I don't think I am violating that.

10:55:54 22 THE COURT: Based on what you just told me, that's
10:55:56 23 the exact opinion you are eliciting. You are eliciting his
10:56:01 24 opinion on whether it was proof beyond a reasonable doubt to
10:56:03 25 essentially prove that it was sufficient for probable cause.

10:56:07 1 The Court wishes to reemphasize, however, its ruling
10:56:09 2 was pursuant to Rules 401 and 403 regarding the
10:56:12 3 inadmissibility opinions regarding the credibility of various
10:56:14 4 witnesses and on the ultimate issue of probable cause. I
10:56:18 5 think that's probably referring back to an earlier ruling as
10:56:23 6 well just to reemphasize.

10:56:24 7 Look, guys, I am going to tell you, this is one of my
10:56:27 8 big problems in this case on both sides, all sides, I guess
10:56:31 9 all sides, is the constant request for me to revisit stuff
10:56:35 10 that was extensively briefed, extensively ruled on. I am
10:56:39 11 sticking with the prior ruling. I am sustaining the
10:56:42 12 objection.

10:56:42 13 MR. NOLAND: Judge, during the trial, there were
10:56:44 14 rulings made with respect to allowing Mr. Sexton to testify.

10:56:48 15 THE COURT: This isn't Mr. Sexton. This isn't
10:56:50 16 Mr. Sexton.

10:56:51 17 MR. NOLAND: Okay.

10:56:51 18 THE COURT: Did this guy to testify about this at the
10:56:53 19 previous trial?

10:56:57 20 MR. LOEVY: No, Mr. Sexton shouldn't have testified
10:56:59 21 --

10:56:59 22 THE COURT: I don't know. Again, I just point out to
10:57:03 23 you that the last line is any doubts that counsel may have
10:57:06 24 regarding the parameters of the court's ruling in this regard
10:57:09 25 are to be resolved by seeking particularized guidance from the

10:57:11 1 Court before attempting to introduce the evidence. The
10:57:14 2 objection is sustained.

10:57:19 3 (The following proceedings were had in open court in the
10:57:20 4 presence and hearing of the jury:)

10:57:20 5 THE COURT: The objection is sustained. The jury is
10:57:22 6 directed to disregard the question as well as the discussion
10:57:25 7 that was had before the sidebar.

10:57:28 8 BY MR. KULWIN:

10:57:33 9 Q. Now, at the trial in 1986, the defense put on certain
10:57:42 10 witnesses, correct?

10:57:43 11 A. Correct.

10:57:44 12 Q. They did not put on?

10:57:48 13 MR. LOEVY: Objection, your Honor. The defense had
10:57:51 14 no obligation to put on anything.

10:57:53 15 THE COURT: Let me hear the question and then I'll
10:57:55 16 rule on it.

10:57:56 17 BY MR. KULWIN:

10:57:57 18 Q. They did not put on a woman by the name of Sandra Langston
10:58:01 19 in your defense?

10:58:01 20 MR. LOEVY: Same objection, your Honor.

10:58:03 21 THE COURT: Okay. So I am instructing the jury that
10:58:05 22 a defendant in a criminal case doesn't have an obligation to
10:58:07 23 put on any witnesses at all. With that understanding, I am
10:58:12 24 going to let you ask the question.

10:58:13 25 BY MR. KULWIN:

10:58:15 1 Q. Correct?

10:58:15 2 A. I believe that's true.

10:58:16 3 Q. And they also did not put on James Langston, correct, in
10:58:21 4 the trial as opposed to the death sentence hearing, correct?

10:58:24 5 A. Correct.

10:58:26 6 Q. Now, in addition to the GPR that Mr. Burns showed you,
10:58:49 7 there was a supplemental report that did indicate that a
10:58:55 8 confidential informant had supplied information to the police
10:59:02 9 indicating that there were several suspects in the case. Do
10:59:08 10 you remember that?

10:59:08 11 A. Yes.

10:59:08 12 Q. Okay. And I'm showing you --

10:59:12 13 MR. KULWIN: If I may have the ELMO, Judge.

10:59:14 14 THE COURT: Yes.

10:59:15 15 MR. KULWIN: Thank you.

10:59:17 16 THE COURT: I think it's on actually.

10:59:18 17 BY MR. KULWIN:

10:59:21 18 Q. Plaintiff's Exhibit 86 at Bates number 9544. Let me zoom
10:59:33 19 in there a little bit.

10:59:38 20 THE COURT: It's like scratching your fingers on the
10:59:40 21 chalkboard.

10:59:41 22 BY MR. KULWIN:

10:59:44 23 Q. Do you see that, sir?

10:59:44 24 A. Yes.

10:59:47 25 Q. And that's referring, even though it doesn't say his name,

10:59:52 1 that's referring ultimately to what was disclosed to the
10:59:55 2 defense being Anthony Sumner, true?
10:59:56 3 A. Correct.
10:59:57 4 MR. LOEVY: Objection to foundation, your Honor.
10:59:58 5 THE COURT: Overruled.
11:00:01 6 MR. KULWIN: If I can have a moment, Judge.
11:00:44 7 THE COURT: Okay.
11:00:44 8 (Brief pause.)
11:01:04 9 MR. KULWIN: No further questions.
11:01:04 10 THE COURT: Redirect.
11:01:05 11 MR. LOEVY: Thank you, your Honor.
11:01:05 12 - - -
11:01:05 13 LAWRENCE WHARRIE, REDIRECT EXAMINATION
11:01:05 14 BY MR. LOEVY:
11:01:07 15 Q. Mr. Burns asked you if your theory of the case was that
11:01:10 16 Carter and Fields was the shooter or Hawkins and Fields was
11:01:13 17 the shooter. Do you remember those questions?
11:01:14 18 A. Yes.
11:01:15 19 Q. You guys went with Hawkins and Fields, didn't you?
11:01:18 20 A. Correct.
11:01:19 21 Q. You asked the -- and you had to pick between Sumner saying
11:01:23 22 it was Hawkins and Carter and the four eyewitnesses who were
11:01:26 23 saying they saw supposedly Hawkins and Fields, right?
11:01:29 24 A. Well, we had to select between whether or not Hawkins was
11:01:35 25 telling Sumner exactly everything how it went down.

11:01:41 1 Q. You couldn't go with both theories, right, you had to pick
11:01:44 2 one?

11:01:44 3 A. Correct.

11:01:44 4 Q. And if Sumner was telling the truth, then all four of your
11:01:49 5 eyewitnesses misidentified the shooter, right?

11:01:52 6 A. Well, when you say Sumner, Sumner was just reiterating
11:01:57 7 what Hawkins told him.

11:01:58 8 Q. All right. If he was testifying truthfully that Hawkins
11:02:00 9 told him that, that all four of your eyewitnesses would have
11:02:04 10 made misidentifications of Hawkins, correct?

11:02:06 11 MR. KULWIN: Objection, argumentative.

11:02:07 12 THE COURT: Overruled.

11:02:09 13 THE WITNESS: Repeat that, please.

11:02:10 14 BY MR. LOEVY:

11:02:11 15 Q. If Sumner was truthfully testifying to what Hawkins told
11:02:14 16 him and the jury believed that, then all four of your
11:02:20 17 eyewitnesses misidentified Hawkins as one of the shooter?

11:02:26 18 A. If you believe that theory, you're correct.

11:02:27 19 Q. If they misidentified Hawkins, they sure were not going to
11:02:31 20 credibly identify the other going to?

11:02:33 21 MR. KULWIN: Objection, Judge. Argumentative.

11:02:35 22 THE COURT: Sustained.

11:02:36 23 BY MR. LOEVY:

11:02:36 24 Q. You were talking about east Cleveland and Nate was not in
11:02:39 25 east Cleveland, right?

11:02:41 1 A. No, he was not.

11:02:42 2 Q. In fact Nate Fields name never came up in east Cleveland,

11:02:46 3 correct?

11:02:46 4 A. You're right. Correct.

11:02:47 5 Q. So there was some conversations with Anthony Sumner, he

11:02:50 6 was saying what he was saying, and Nate Fields never came into

11:02:53 7 any scenario in east Cleveland, correct?

11:02:57 8 A. Correct.

11:02:57 9 Q. Did he write down what he told you?

11:03:00 10 A. Who?

11:03:00 11 Q. Sumner.

11:03:01 12 A. In east Cleveland?

11:03:03 13 Q. Yes.

11:03:03 14 A. No, I didn't take notes.

11:03:04 15 Q. All right. This is page 823 of the April 2014 hearing.

11:03:14 16 This is page 823. May I show you?

11:03:17 17 A. Sure.

11:03:18 18 Q. The middle of the page there. It does say you took notes

11:03:24 19 of your meetings with Mr. Sumner, correct?

11:03:26 20 A. I said I would make notes before I would present him to

11:03:42 21 the grand jury.

11:03:43 22 Q. All right. Where are the notes now?

11:03:45 23 MR. KULWIN: Objection, not impeaching, Judge.

11:03:47 24 MR. LOEVY: I didn't impeach, your Honor.

11:03:49 25 THE COURT: Okay. That's not why it was introduced,

11:03:53 1 in other words. The objection is overruled.

11:03:54 2 BY MR. LOEVY:

11:03:55 3 Q. Where are those notes now, sir?

11:03:56 4 A. I have no idea.

11:03:57 5 Q. All right. And when you went before the grand jury, you
11:04:00 6 did misspeak, correct?

11:04:01 7 A. Correct.

11:04:02 8 Q. And some of the stories Sumner were telling you in
11:04:11 9 Cleveland were obviously untrue?

11:04:13 10 MR. KULWIN: Objection, stories, Judge, and
11:04:15 11 obviously. Argumentative.

11:04:18 12 THE COURT: Sustained as to the phrasing of the
11:04:20 13 question. Choose a different word. Time for argument is
11:04:25 14 argument at the end of the case, not now.

11:04:27 15 BY MR. LOEVY:

11:04:29 16 Q. He did tell you, quote, some other wild stories, end
11:04:33 17 quote, correct?

11:04:34 18 A. Correct.

11:04:35 19 Q. And some of his explanations made no sense at all,
11:04:41 20 correct?

11:04:41 21 A. Correct.

11:04:42 22 Q. And you were asked about the confession. Mr. Burns read
11:04:51 23 you the testimony about Hawkins supposedly confessing to
11:04:55 24 Anthony Sumner, do you remember that testimony?

11:04:56 25 A. Yes.

11:04:56 1 Q. Now, there was also testimony on cross-examination that
11:05:00 2 Anthony Sumner was claiming that like seven different El Rukn
11:05:03 3 generals confessed to him always in private to other crimes,
11:05:07 4 right?
11:05:07 5 A. I don't know.
11:05:11 6 Q. You don't remember that either way?
11:05:12 7 A. No.
11:05:13 8 Q. All right. The story that was read to you or the
11:05:17 9 allegations that were read to you that Sumner said on the
11:05:19 10 stand, Nate -- Hawkins told you this, Hawkins told me that,
11:05:24 11 Hawkins told me that, do you remember that testimony Mr. Burns
11:05:27 12 just read?
11:05:27 13 A. Yes.
11:05:27 14 Q. None of that was admissible against Mr. Fields at his
11:05:30 15 trial because it was hearsay vis-à-vis Mr. Fields isn't that
11:05:36 16 true?
11:05:36 17 A. I don't know if they -- well, are you talking about as far
11:05:42 18 as rules of evidence?
11:05:43 19 Q. Yes.
11:05:43 20 A. I would say that's probably true.
11:05:45 21 Q. This was a joint trial where Fields and Hawkins were being
11:05:51 22 tried together?
11:05:51 23 A. Yes.
11:05:51 24 Q. And it was a bench trial, so the judge received some
11:05:54 25 evidence that was admissible against only certain people and

11:05:57 1 other evidence that wasn't admissible against others, right?

11:06:00 2 A. Yes.

11:06:00 3 Q. So all that story about what Hawkins told Sumner is pure
11:06:04 4 hearsay vis-à-vis Nate?

11:06:07 5 MR. KULWIN: Objection, Judge.

11:06:07 6 THE COURT: Overruled.

11:06:09 7 THE WITNESS: I mean, I don't recall the ruling, but
11:06:12 8 that could be possible what you're arguing there. I mean,
11:06:16 9 that could have been the case.

11:06:21 10 BY MR. LOEVY:

11:06:22 11 Q. What was admissible against Nate was his supposed
11:06:24 12 confession?

11:06:25 13 MR. KULWIN: Objection to supposed, Judge,
11:06:28 14 argumentative.

11:06:28 15 THE COURT: Overruled.

11:06:29 16 THE WITNESS: Correct.

11:06:29 17 BY MR. LOEVY:

11:06:34 18 Q. All right. You don't know if the story -- the allegations
11:06:40 19 that Mr. Burns read to you that Sumner said were Mr. Sumner's
11:06:45 20 original story, do you?

11:06:46 21 A. Well, original story, I don't know what you mean.

11:06:52 22 Q. I mean, he talked about it multiple times over a series of
11:06:56 23 a week, correct?

11:06:57 24 A. That's the only one I remember him stating.

11:07:00 25 Q. No. I'm saying he was interviewed outside of your

11:07:04 1 presence, wasn't he?

11:07:04 2 A. Well, yes.

11:07:06 3 Q. By other law enforcement officers, correct?

11:07:08 4 A. Yes.

11:07:09 5 Q. And you don't know what happened in those interviews that
11:07:12 6 you weren't part of, correct?

11:07:13 7 A. Of course not.

11:07:14 8 Q. So you don't know either way whether maybe law enforcement
11:07:17 9 said, hey?

11:07:17 10 MR. KULWIN: Judge, I am going to object. Calls for
11:07:19 11 speculation.

11:07:21 12 THE COURT: Let me hear the whole question.

11:07:22 13 BY MR. LOEVY:

11:07:22 14 Q. You don't know either way whether the details were
11:07:25 15 suggested to Sumner and he adopted them or Sumner came forward
11:07:28 16 with them?

11:07:28 17 THE COURT: Sustained. Argumentative.

11:07:30 18 BY MR. LOEVY:

11:07:31 19 Q. You told Mr. Burns that O'Callaghan never said the
11:07:34 20 witnesses were threatened, correct?

11:07:35 21 A. Correct.

11:07:36 22 Q. You stand by that?

11:07:38 23 A. I don't -- yeah. Who are you talking about, Sumner?

11:07:42 24 Q. The witnesses.

11:07:46 25 MR. BURNS: Objection, your Honor?

11:07:47 1 MR. KULWIN: Objection, Judge.

11:07:48 2 BY MR. LOEVY:

11:07:49 3 Q. Mr. Burns asked you --

11:07:51 4 THE COURT: Go ahead.

11:07:51 5 BY MR. LOEVY:

11:07:52 6 Q. Specifically if O'Callaghan told you the witnesses were
11:07:53 7 threatened and you said no, correct?

11:07:55 8 MR. BURNS: Objection, your Honor.

11:07:57 9 THE COURT: Well, the jury has heard the prior
11:07:59 10 testimony. If it's -- why don't you just ask your question.

11:08:02 11 BY MR. LOEVY:

11:08:02 12 Q. You were asked by Mr. Burns about gang retaliation theory,
11:08:05 13 that was your theory at trial, right?

11:08:07 14 A. Correct.

11:08:07 15 Q. Now, isn't it true that there was not one scrap of paper
11:08:11 16 or corroboration by anybody other than a corroborator that was
11:08:15 17 claiming that there was a problem between the El Rukns and the
11:08:18 18 Goon Squad?

11:08:18 19 MR. KULWIN: Objection, argumentative, Judge.

11:08:20 20 MR. LOEVY: No.

11:08:23 21 THE COURT: Rephrase the question.

11:08:28 22 BY MR. LOEVY:

11:08:29 23 Q. There was no Goon Squad witness, Gerald Morris, Randy
11:08:34 24 Langston, any other Goon Squad member who ever gave any
11:08:37 25 information that there was any problem between the Goon Squads

11:08:39 1 and the El Rukns; isn't that true?

11:08:43 2 A. My recollection was that there was -- there was some
11:08:48 3 problem. Yeah, a beef between the two.

11:08:51 4 Q. And that was all coming from Anthony Sumner, correct?

11:08:55 5 A. I don't know if it was all coming from him. I just don't
11:08:58 6 remember what the source was.

11:09:00 7 Q. All right. Would you dispute or do you have a memory
11:09:03 8 either way that not a single Goon Squad member ever in a piece
11:09:06 9 of paper or at trial corroborated this theory?

11:09:10 10 A. I don't know.

11:09:12 11 Q. You were asked about a hit team and he asked you if guys
11:09:15 12 get in a car, here's my question to you, sir. If four guys
11:09:21 13 get into a car with guns with the intention of going to
11:09:26 14 assassinate somebody, that would be a hit team, wouldn't it?

11:09:29 15 MR. KULWIN: Objection, argumentative, covered in
11:09:31 16 direct.

11:09:36 17 THE WITNESS: Yes.

11:09:31 18 THE COURT: Overruled given the cross.

11:09:36 19 BY MR. LOEVY:

11:09:37 20 Q. Your answer?

11:09:37 21 THE COURT: He said yes.

11:09:39 22 THE WITNESS: Yes.

11:09:41 23 BY MR. LOEVY:

11:09:42 24 Q. It would still be a hit team, won't it?

11:09:44 25 A. They'd all have the same responsibility.

11:09:47 1 Q. All right. You were asked if you had any reason to have
11:09:52 2 confidence that Mr. Sumner had been mistreated by the Chicago
11:09:55 3 police officers. Do you remember that?

11:09:56 4 A. Yes.

11:09:57 5 Q. Isn't it true there were reasons why you would have lack
11:10:02 6 of confidence why Chicago police officers might have
11:10:05 7 mistreated witnesses during the '80s?

11:10:08 8 MR. BURNS: Objection, your Honor.

11:10:10 9 THE COURT: Sustained.

11:10:11 10 BY MR. LOEVY:

11:10:15 11 Q. All right. You were asked if there was a police report
11:10:18 12 and this is Plaintiff's Exhibit 86, this is what Mr. Kulwin
11:10:22 13 showed you about this, there was a cooperating information --
11:10:25 14 individual who had supplied information relative to this case.
11:10:29 15 Do you see that?

11:10:29 16 A. Yes.

11:10:30 17 Q. That is not documented in murder confessions the way
11:10:34 18 police document murder confessions, is it?

11:10:36 19 A. No.

11:10:37 20 Q. That does not say Nate Fields confessed to Anthony Sumner
11:10:42 21 that he did it, correct?

11:10:43 22 A. Correct.

11:10:44 23 Q. All right. You were shown a police report by Mr. Burns
11:10:48 24 dated May 21st documenting that Hawkins was identified. Do
11:10:54 25 you remember seeing that document?

11:10:55 1 A. Yes.

11:10:56 2 Q. That's May 21st. But the document that identified

11:10:59 3 Ferguson was dated when? There is it is at the top.

11:11:05 4 A. May 18th.

11:11:07 5 Q. All right. You were asked some questions about when Mr.

11:11:15 6 Fields and Mr. Hawkins elected a bench trial. Do you remember

11:11:19 7 that question?

11:11:20 8 A. Yes.

11:11:20 9 Q. Isn't it true that during the trial you came to learn of

11:11:23 10 the bribe?

11:11:23 11 A. Correct.

11:11:23 12 Q. And you did not tell Mr. Fields' attorney, did you?

11:11:26 13 A. No.

11:11:27 14 Q. You were asked if you had the GPR report during discovery

11:11:39 15 and you said that you did?

11:11:40 16 A. Yes.

11:11:40 17 Q. But you didn't get it until April '86 isn't that also

11:11:44 18 true?

11:11:44 19 A. I don't know.

11:11:46 20 Q. All right. Showing you a copy plaintiff's 86-11, this is

11:11:55 21 an official supp report on a different subject, correct?

11:11:58 22 A. Yes.

11:12:00 23 Q. And the official supp reports, if it's submitted on the

11:12:04 24 30th of April, 1984 will have a date stamp of when it's

11:12:09 25 received, correct?

11:12:10 1 A. Yeah, okay.

11:12:11 2 Q. Can you read the date stamp that this April 30th report

11:12:14 3 was received by the police department?

11:12:17 4 A. May 1st, 1984.

11:12:18 5 Q. All right. GPRs bear no such stamp, correct?

11:12:24 6 A. I don't know.

11:12:25 7 Q. Showing you a copy of Plaintiff's Exhibit 12 which is also

11:12:28 8 Defendant's Exhibit 70, just confirm, there is no date stamp

11:12:31 9 on that document, correct?

11:12:32 10 A. There is not.

11:12:34 11 Q. All right. You told Mr. Burns that you believe you heard

11:12:40 12 Sumner say that Nate confessed. Do you remember that?

11:12:42 13 A. Say that again.

11:12:44 14 Q. Would it be fair to say you are not exactly sure anymore

11:12:50 15 you were actually there when Sumner said Nate confessed it was

11:12:53 16 a good exercise or are you sure, either way?

11:12:56 17 A. I know that he told me.

11:12:59 18 Q. At some point preparing for trial, right?

11:13:01 19 A. My recollection is that I knew that early on. That's my

11:13:05 20 recollection.

11:13:05 21 Q. Do you have any notes?

11:13:07 22 MR. KULWIN: Objection, Judge, asked and answered.

11:13:08 23 THE WITNESS: No.

11:13:09 24 MR. KULWIN: On direct.

11:13:10 25 THE COURT: Sustained.

11:13:11 1 BY MR. LOEVY:

11:13:11 2 Q. You did say you had notes in preparing for the grand jury?

11:13:15 3 MR. KULWIN: Objection, Judge.

11:13:16 4 THE COURT: The question that you just asked that I
11:13:18 5 sustained the question to, you asked that exact question
11:13:21 6 during direct and I sustained it. You are re-asking it on
11:13:26 7 redirect.

11:13:26 8 MR. LOEVY: Understood.

11:13:27 9 BY MR. LOEVY:

11:13:28 10 Q. Mr. Sumner during these debriefings made an allegation
11:13:31 11 that too much force was used against him, correct?

11:13:33 12 A. When?

11:13:35 13 Q. He later claimed that during the debriefings in Cleveland
11:13:41 14 more force than was appropriate was used on him, correct?

11:13:44 15 A. What are you talking about?

11:13:45 16 Q. At trial, didn't he -- wasn't he impeached with the fact
11:13:50 17 that he was making this allegation that there was too much
11:13:52 18 force used against him?

11:13:53 19 A. Are you talking about the statement he made to the
11:13:56 20 defendants' lawyers?

11:13:57 21 Q. Right. And we have already covered that at this trial, so
11:14:00 22 I am just asking when you were present?

11:14:02 23 MR. KULWIN: Judge, I'm going to object.

11:14:04 24 THE COURT: Overruled. Finish the question, please.

11:14:07 25 BY MR. LOEVY:

11:14:08 1 Q. When you were present, none of that happened, correct?

11:14:10 2 A. Correct.

11:14:10 3 Q. And you were in and out of the rooms, correct?

11:14:13 4 A. Correct.

11:14:13 5 Q. But obviously if you had seen too much force, you would
11:14:16 6 not have permitted that, correct?

11:14:17 7 A. Correct.

11:14:18 8 MR. LOEVY: All right. I have no further questions,
11:14:20 9 your Honor.

11:14:20 10 THE COURT: Mr. Burns, anything else?

11:14:21 11 MR. BURNS: I would, Judge. Before I do, I need to
11:14:26 12 discuss.

11:14:26 13 THE COURT: Sidebar.

11:14:37 14 (The following proceedings were had at sidebar outside the
11:14:38 15 hearing of the jury:)

11:14:38 16 THE COURT: Yes.

11:14:39 17 MR. BURNS: I want to be careful, Judge, counsel
11:14:41 18 asked a question of Mr. Wharrie that he knew about the bribe.
11:14:48 19 I believe that opens the he was told there might be a bribe
11:14:51 20 that was being passed on behalf of both individuals. I'm
11:14:54 21 concerned now that I'd like to ask the question --

11:14:55 22 THE COURT: Why would him opening the door to that be
11:14:59 23 -- why would his knowledge about the bribe and failure to tell
11:15:02 24 Fields about it open the door to what he was told about the
11:15:07 25 purpose of the bribe? I don't get it. It doesn't make sense

11:15:09 1 to me.

11:15:09 2 MR. BURNS: I'm saying that he's raised the issue.

11:15:12 3 THE COURT: Yeah, I don't understand why that would
11:15:13 4 open the door to this underlying statement.

11:15:16 5 MR. BURNS: I would like to ask him, you did know the
11:15:19 6 bribe was being passed, you had been told the bribe was being
11:15:23 7 passed on behalf of both.

11:15:25 8 THE COURT: Who was he told that by?

11:15:28 9 MR. BURNS: It was coming through information that
11:15:29 10 they had from the FBI that was involved in this through the
11:15:34 11 state's attorney's office and he as the prosecutor in that
11:15:37 12 case was made aware of that, that they had received the
11:15:38 13 information, Michael Roland (phonetic) who was the direct
11:15:42 14 supervisor made him aware of this.

11:15:43 15 MR. LOEVY: It's hearsay. He was told by some
11:15:46 16 unknown declarant that it was on behalf of both and it doesn't
11:15:50 17 go to anything, and therefore what? Therefore what? So he
11:15:53 18 knew.

11:15:54 19 THE COURT: What is the therefore what?

11:16:00 20 MR. KULWIN: He's raised the inference to the jury
11:16:02 21 that you knew about this alleged bribe and you never told Nate
11:16:04 22 Fields or Nate Fields never had the opportunity to withdraw
11:16:06 23 from the alleged conspiracy or to make a note of it or raise
11:16:09 24 it later on, and you held that back.

11:16:11 25 THE COURT: Okay. What about that?

11:16:12 1 MR. LOEVY: That's actually consistent with him
11:16:15 2 saying, I didn't tell Nate. Why would he tell Nate's attorney
11:16:17 3 if Nate was allegedly involved in it? The FBI is
11:16:18 4 investigating it.

11:16:19 5 THE COURT: I think that's Mr. Kulwin's point. In
11:16:21 6 other words -- in other words, you asked two questions. You
11:16:23 7 asked did you learn about the bribe? Answer, yes. Did you
11:16:26 8 tell Mr. Fields' attorney? Answer, no. Arguably that leaves
11:16:29 9 the jury with the impression that there was something he
11:16:32 10 withheld from Mr. Fields during the trial of the case, and so
11:16:35 11 what he is being asked to do is explain why didn't you tell
11:16:39 12 Mr. Fields' attorney.

11:16:39 13 MR. LOEVY: Well, even if it was purely Hawkins,
11:16:43 14 they're co-defendants, you couldn't tell --

11:16:44 15 THE COURT: Mr. Loevy, this is where your
11:16:46 16 carelessness gets the better of you. Here's what's going to
11:16:49 17 happen. This is going to be done extremely carefully. Okay?
11:16:56 18 So it's going to be was there a reason, was there a reason why
11:16:59 19 you didn't tell Mr. Fields' attorney about the bribe? If he
11:17:03 20 says no, that's the end. If he says yes, then you're going to
11:17:08 21 ask him a leading question, was it the reason and what you had
11:17:11 22 been told was that the bribe had been passed on behalf of both
11:17:14 23 of the defendants?

11:17:16 24 You understand he will answer yes to that question?
11:17:16 25 I'm assuming you do.

11:17:20 1 MR. KULWIN: Yes.

11:17:20 2 THE COURT: That's the way you're going to do it.

11:17:21 3 MR. KULWIN: It seems to me that Mr. Loevy by raising
11:17:24 4 this about wild stories that Sumner told the police about all
11:17:27 5 sorts of El Rukn --

11:17:28 6 THE COURT: That was his words, it was somebody
11:17:29 7 else's words. He quoted that.

11:17:31 8 MR. KULWIN: That's true. But the inference is that
11:17:35 9 Sumner is a nut job and none of the stuff --

11:17:38 10 THE COURT: If people do not think that Sumner has
11:17:41 11 been covered -- what I do want to put in? Just tell me.

11:17:47 12 MR. KULWIN: That it was corroborated by a number of
11:17:49 13 other witnesses.

11:17:50 14 THE COURT: That's argumentative.

11:17:54 15 (The following proceedings were had in open court in the
11:17:55 16 presence and hearing of the jury:)

11:17:55 17 THE COURT: Okay. Mr. Burns, you can go ahead.

11:18:00 18 - - -

11:18:00 19 LAWRENCE WHARRIE, CROSS-EXAMINATION

11:18:01 20 BY MR. BURNS:

11:18:01 21 Q. Mr. Wharrie, I'm going to ask you a very direct question.
11:18:18 22 Listen closely to it. Counsel asked you were you aware of a
11:18:23 23 bribe. Do you remember that question?

11:18:24 24 A. Yes.

11:18:25 25 Q. And he asked you that you didn't tell Mr. Fields about it.

11:18:32 1 Do you remember that question?

11:18:33 2 A. Yes.

11:18:33 3 Q. Is there a reason you did not tell Mr. Fields or his
11:18:41 4 counsel about the bribe, yes or no?

11:18:44 5 A. Yes.

11:18:46 6 Q. And what was the?

11:18:51 7 MR. KULWIN: No.

11:18:53 8 THE COURT: Leading question, employees.

11:18:55 9 MR. KULWIN: Sorry, Judge.

11:18:56 10 THE COURT: Don't apologize.

11:18:58 11 BY MR. BURNS:

11:19:04 12 Q. And was the reason that that was not shared with the
11:19:09 13 attorneys for Mr. Fields that Mr. Fields was involved in that
11:19:21 14 bribe?

11:19:23 15 THE COURT: The jury is directed to disregard the
11:19:25 16 question completely. Let me see you again at sidebar.

11:19:34 17 (The following proceedings were had at sidebar outside the
11:19:35 18 hearing of the jury:)

11:19:35 19 THE COURT: Oh, my God. I gave you the wording on
11:19:43 20 it.

11:19:44 21 MR. BURNS: I thought I was trying to --

11:19:46 22 THE COURT: You aren't even close.

11:19:48 23 MR. LOEVY: Your Honor.

11:19:48 24 THE COURT: Hold on one second. So just to be real
11:20:18 25 clear, I know you guys ordered the realtime feed, I got what I

11:20:26 1 told you to ask was exactly what you told me, what would the
11:20:30 2 evidence be, you said that he had been told that the bribe had
11:20:33 3 been passed on behalf of both defendants. So I said is the
11:20:38 4 reason you didn't tell Mr. Fields' attorney was that you had
11:20:40 5 been told that the bribe had been passed on behalf of both
11:20:43 6 defendants. That's the question you can ask him. You asked
11:20:46 7 something different from that. Were you told that Fields was
11:20:48 8 involved in the bribe. It's something different. It's
11:20:51 9 completely different. That's -- so I'm going to give you one
11:20:54 10 more try. If you botch it, it's excluded.

11:20:56 11 MR. LOEVY: Your Honor, we would like to be heard if
11:20:58 12 we could.

11:20:59 13 THE COURT: You have been heard. You have been
11:21:01 14 heard.

11:21:03 15 MR. BURNS: May I have one moment, Judge.

11:21:11 16 (The following proceedings were had in open court in the
11:21:50 17 presence and hearing of the jury:)

11:21:50 18 BY MR. BURNS:

11:21:51 19 Q. Following up on the last question, and was the reason was
11:21:55 20 because you had been told the bribe had been passed on behalf
11:21:59 21 of both defendants, yes or no?

11:22:03 22 A.

11:22:09 23 THE COURT: It's either yes or no. It's a yes or no
11:22:12 24 question. You're going to have to answer it that way.

11:22:15 25 THE WITNESS: Yes.

11:22:16 1 MR. BURNS: Thank you, your Honor.

11:22:18 2 THE COURT: Anything else, Mr. Burns?

11:22:19 3 MR. BURNS: No.

11:22:20 4 THE COURT: Mr. Kulwin?

11:22:21 5 MR. KULWIN: Yes, Judge.

11:22:23 6 - - -

11:22:23 7 LAWRENCE WHARRIE, RECROSS-EXAMINATION

11:22:23 8 BY MR. KULWIN:

11:22:24 9 Q. Mr. Wharrie, you were asked some questions, it's worse
11:22:30 10 being a witness than being a lawyer?

11:22:31 11 A. Yes, it is.

11:22:33 12 THE COURT: That's always been true, by the way.

11:22:35 13 BY MR. KULWIN:

11:22:38 14 Q. You were asked some questions about whether the only
11:22:43 15 documentation that there would say -- that the motive for the
11:22:47 16 shooting or that there was no written documentation that the
11:22:50 17 motive for the shooting was a conflict between the Goon Squad
11:22:54 18 and the El Rukns. Do you remember those questions?

11:22:57 19 MR. LOEVY: Objection, your Honor.

11:22:57 20 THE COURT: I actually sustained an objection to that
11:22:59 21 question. Just get to the question you are going to ask.

11:23:02 22 BY MR. KULWIN:

11:23:02 23 Q. There was a written documentation -- let me show you
11:23:05 24 Plaintiff's Exhibit 86. This is a statement --

11:23:10 25 MR. KULWIN: Can I have the ELM0?

11:23:12 1 THE COURT: You have it.

11:23:12 2 BY MR. KULWIN:

11:23:13 3 Q. This is a statement made by Mr. Fields --

11:23:17 4 MR. LOEVY: Reject that characterization, your Honor.

11:23:20 5 THE COURT: Rephrase the question. Actually, this --
11:23:23 6 if you go backup to the top.

11:23:25 7 MR. KULWIN: Sure.

11:23:27 8 THE COURT: Just rephrase the question.

11:23:30 9 MR. KULWIN: Can I zoom back in, your Honor.

11:23:32 10 THE COURT: Yes. I wanted to get the jury to get a
11:23:35 11 policemen memory of what they were looking at.

11:23:38 12 BY MR. KULWIN:

11:23:39 13 Q. Isn't it true you had a police report in the permanent
11:23:44 14 retention file that had a transcribed statement by Mr. Fields
11:23:45 15 in which he says he was asked about the motive, this is Mr.
11:23:50 16 Fields talking now, and stated that he did not know for sure
11:23:53 17 but that two members of the El Rukns had been shot by members
11:23:57 18 of the Goon Squad of the disciples. He stated that Fuddy was
11:24:01 19 a known member of the disciples. You had that as part of the
11:24:06 20 information before trial, correct?

11:24:07 21 A. Correct.

11:24:08 22 Q. And lastly, on this point, not to beat it into the ground,
11:24:21 23 but on this point of a hit team, four guys who get in a car
11:24:24 24 and get a bunch of guns to go assassinate somebody and don't
11:24:28 25 do it are not liable if the next day four other guys get no a

11:24:33 1 car with a bunch of guns and actually go out and murder the
11:24:36 2 people, right?
11:24:37 3 MR. LOEVY: Objection, relevance, your Honor, why.
11:24:39 4 THE COURT: Phrased that way, I am going to let you
11:24:42 5 ask it. Objection sustained.
11:24:43 6 MR. KULWIN: I will rephrase.
11:24:44 7 MR. LOEVY: Actually, it's covered on direct.
11:24:46 8 THE COURT: Hang on. Go ahead and ask the question.
11:24:48 9 BY MR. KULWIN:
11:24:49 10 Q. The four guys who get into a car and actually shoot the
11:24:54 11 guy, are they responsible under the law as the hit team for
11:24:58 12 the double murder?
11:24:59 13 A. Correct.
11:24:59 14 Q. If the four -- if four other guys get into a car and drive
11:25:03 15 around and think about it but never do it, they're not
11:25:06 16 responsible under the law?
11:25:07 17 MR. LOEVY: Same objection, not relevance.
11:25:12 18 MR. KULWIN: It's responding to his statement.
11:25:13 19 THE COURT: Responsible under the law was not part of
11:25:16 20 the question. The objection is sustained. Let me just get
11:25:19 21 you over at sidebar for a second so I can tell you what I see
11:25:22 22 the real problem is. I apologize.
11:25:29 23 MR. KULWIN:
11:25:30 24 THE COURT: I'm poll apologizing to them not to you
11:25:35 25 (sidebar.

11:25:35 1 THE COURT: The question you asked as you know is a
11:25:38 2 completely complicated question about accountability and
11:25:41 3 conspiracy law.

11:25:42 4 MR. KULWIN: Okay. Too complicated. Thanks, Judge.
11:25:45 5 (The following proceedings were had in open court in the
11:25:49 6 presence and hearing of the jury:)

11:25:49 7 THE COURT: I apologize to lawyers only rarely.
11:25:52 8 Let's put it that way.

11:25:53 9 MR. KULWIN: It's always welcome.
11:25:55 10 I have nothing else, your Honor.

11:25:57 11 THE COURT: Mr. Loevy.

11:25:59 12 - - -

11:25:59 13 LAWRENCE WHARRIE, REDIRECT EXAMINATION

11:25:59 14 BY MR. LOEVY:

11:26:01 15 Q. You have no personal knowledge about the bribe, correct?

11:26:03 16 A. Correct.

11:26:03 17 Q. You were asked questions about whether there's any
11:26:06 18 documentation. Focusing specifically on whether any witness
11:26:11 19 other than the police officers and the cooperators, no Goon
11:26:15 20 Squad member said that there was any shooting between the El
11:26:18 21 Rukns and the Goon Squads, correct?

11:26:20 22 MR. KULWIN: I'll object, covered already.

11:26:23 23 THE COURT: Yes, he did.

11:26:24 24 MR. LOEVY: I don't have any further questions.

11:26:25 25 THE COURT: Do any of the jurors have any questions

11:26:27 1 for the witness. I do not see anybody writing. You just
11:26:32 2 raise your hand and waive. I will apologize again that we
11:26:35 3 didn't do a break. I'm so sorry. We are taking our break.

11:26:39 4 (Short break.)

11:41:21 5 (The jury enters the courtroom.)

11:41:21 6 THE COURT: Mr. Murphy, you can come back up.

11:41:56 7 Mr. Murphy, do you understand that you are still
11:41:59 8 under oath.

11:42:00 9 THE WITNESS: Yes, I do.

11:42:01 10 THE COURT: Let me do what's necessary to flip on the
11:42:04 11 wireless mic. It should be working now. Mr. Loevy, you can
11:42:08 12 go ahead.

11:42:08 13 - - -

11:42:08 14 JOSEPH MURPHY, DIRECT EXAMINATION CONTINUED

11:42:08 15 BY MR. LOEVY:

11:42:13 16 Q. When we broke yesterday afternoon, you told us that you
11:42:16 17 always promised that if they get into trouble, you'll support
11:42:20 18 them at their parole hearings?

11:42:24 19 MR. BURNS: Objection, mischaracterizing the
11:42:26 20 testimony.

11:42:26 21 THE COURT: Overruled.

11:42:27 22 THE WITNESS: Could you repeat the question again?

11:42:29 23 BY MR. LOEVY:

11:42:30 24 Q. What did you say you promised your cooperators, vis-à-vis
11:42:35 25 their parole when they first agreed to cooperate?

11:42:37 1 A. I told them I couldn't make any promises to what would
11:42:41 2 happen to their sentence if they were found guilty or anything
11:42:44 3 like that, but I would bring to the attention of the
11:42:49 4 prosecutors and the state's attorneys in this case or the
11:42:55 5 federal attorneys.

11:42:56 6 Q. Didn't you say last night, parole specifically?

11:43:00 7 MR. KULWIN: Objection.

11:43:02 8 MR. BURNS: Objection.

11:43:03 9 THE COURT: He has to finish his answer.

11:43:05 10 THE WITNESS: I would bring my attention to them and
11:43:07 11 if there was need be if there were other judicial hearings or
11:43:11 12 parole hearings, I would bring the attention to those members
11:43:14 13 of their cooperation as long as it's been truthful.

11:43:17 14 BY MR. LOEVY:

11:43:18 15 Q. All right. Are you going to honor your promise to
11:43:21 16 Derrick?

11:43:22 17 A. I was never asked to.

11:43:27 18 Q. Are you going to when owes's up for parole, keep your
11:43:31 19 promise if he is up for parole?

11:43:35 20 MR. BURNS: Objection, your Honor?

11:43:37 21 THE COURT: Overruled.

11:43:37 22 THE WITNESS: If I am asked to, I will.

11:43:41 23 BY MR. LOEVY:

11:43:41 24 Q. Have you ever intervened on any other murders's parole on
11:43:45 25 their behalf?

11:43:45 1 A. I have never been asked to.

11:43:47 2 MR. BURNS: Objection to the form of the question,
11:43:48 3 your Honor.

11:43:48 4 THE COURT: Overruled.

11:43:49 5 BY MR. LOEVY:

11:43:49 6 Q. Have you ever done it?

11:43:51 7 MR. KULWIN: Objection, asked and answered.

11:43:52 8 THE COURT: Well, the question was if every had. He
11:43:55 9 said he had never been asked to. I am going to let him ask
11:43:59 10 the question, have you ever done it or not.

11:44:03 11 THE WITNESS: No.

11:44:04 12 BY MR. LOEVY:

11:44:04 13 Q. Do you have they understanding with Derrick whether he
11:44:07 14 asks you if you will support him?

11:44:09 15 A. I made that offer to him when he cooperated with us back
11:44:13 16 in 89 or 88, I believe.

11:44:16 17 Q. Is it your understanding presently that Derrick Kees has
11:44:18 18 an understanding that in connection with his testimony, you're
11:44:22 19 going to help him with his parole next year?

11:44:24 20 MR. KULWIN: Objection, argumentative, asked and
11:44:27 21 answered.

11:44:30 22 THE COURT: Rephrase the question.

11:44:33 23 BY MR. LOEVY:

11:44:33 24 Q. Do you have an understanding with Derrick that when he's
11:44:36 25 up for parole next year, you're going to help him?

11:44:39 1 A. Well, as I mentioned, I made that -- I made that promise
11:44:45 2 to him back in '88 or 89. I haven't had any conversation with
11:44:51 3 Derrick Kees since 1988 or 89.

11:44:54 4 Q. All right. Have you talked to anybody on his behalf?

11:44:57 5 A. No, sir.

11:44:58 6 Q. How about the information that Derrick provided yesterday.
11:45:04 7 I want to talk to you about that specifically.

11:45:07 8 Now, one of the things he told you was I overheard
11:45:10 9 four people confess, right?

11:45:11 10 A. Derrick Kees?

11:45:13 11 Q. Yeah.

11:45:14 12 A. I believe so.

11:45:14 13 Q. Now, a jail house confession by somebody who is looking
11:45:18 14 for a deal, that has limited probable cause value, would you
11:45:21 15 agree?

11:45:21 16 MR. KULWIN: Objection, Judge, jail house confession,
11:45:24 17 argumentative and misstates the evidence.

11:45:26 18 THE COURT: Overruled. You can answer.

11:45:29 19 BY MR. LOEVY:

11:45:29 20 Q. Mr. Kulwin was in a jail house, a correctional facility,
11:45:32 21 correct?

11:45:34 22 A. When he had the conversation?

11:45:39 23 Q. No, when you're interacting with him?

11:45:42 24 A. Oh, when I was interacting with him?

11:45:44 25 Q. Yeah.

11:45:45 1 A. Yes, he was under arrest.

11:45:47 2 Q. So this is literally the equivalent of a jail house snitch
11:45:50 3 trying to make a deal for himself by implicating other people,
11:45:56 4 correct?

11:45:57 5 MR. KULWIN: Judge.

11:45:59 6 THE COURT: Overruled.

11:45:59 7 THE WITNESS: I don't believe so.

11:46:00 8 BY MR. LOEVY:

11:46:01 9 Q. Do you believe for probable cause value, for someone who
11:46:04 10 was in the kind of predicament be that Derrick Kees was in, he
11:46:07 11 would makeup something to help himself, could we agree on
11:46:10 12 that?

11:46:10 13 A. I don't believe so.

11:46:11 14 Q. All right. And isn't it true that if he wanted to be
11:46:17 15 credible for probable cause purposes e-has to put himself into
11:46:20 16 the crime?

11:46:20 17 MR. KULWIN: Judge, I am going to object, it calls
11:46:22 18 for speculation and argumentative.

11:46:24 19 THE COURT: Rephrase the question. It's a little
11:46:26 20 confusing I think.

11:46:26 21 BY MR. LOEVY:

11:46:27 22 Q. All right. There is a big difference between someone
11:46:30 23 saying, hey, I was in a booth once five years ago and someone
11:46:34 24 confessed to me, that's A, and, hey, I was in a booth once and
11:46:38 25 someone confessed to me but I'll put myself in the crime.

11:46:42 1 Those are two very different things?

11:46:43 2 MR. KULWIN: Same objection, Judge.

11:46:45 3 THE COURT: Out -- overruled. I was writing out on
11:46:47 4 something. Overruled.

11:46:52 5 THE WITNESS: Are these hypotheticals you are giving
11:46:55 6 me?

11:46:56 7 BY MR. LOEVY:

11:46:56 8 Q. Yes.

11:46:57 9 A. I don't know. All I would do is present those statements
11:47:02 10 -- it's not my decision.

11:47:03 11 Q. All right. For probable cause purposes, would you agree
11:47:06 12 there's a big difference between A, I was in a booth once and
11:47:10 13 some guy confessed to me and I want a deal and, B, I was in a
11:47:14 14 booth once, some guy confessed to me, I want a deal and I was
11:47:17 15 part of the crime, B is a more serious story, right?

11:47:20 16 MR. KULWIN: Judge, I am going to object,
11:47:21 17 argumentative.

11:47:22 18 MR. LOEVY: He hasn't answered yet, your Honor.

11:47:25 19 THE COURT: The objection at this point is
11:47:28 20 argumentative. I am going to sustain the objection.

11:47:29 21 BY MR. LOEVY:

11:47:30 22 Q. All right. Mr. Kees did put himself into the story,
11:47:34 23 correct?

11:47:34 24 MR. KULWIN: Objection to story.

11:47:36 25 THE COURT: Overruled. Actually, no, use a

11:47:39 1 non-loaded word. It's a question, not your closing argument.

11:47:43 2 BY MR. LOEVY:

11:47:43 3 Q. All right. You understand we don't agree whether Mr. Kees
11:47:48 4 was there?

11:47:49 5 MR. KULWIN: Objection, Judge, what he agrees to.

11:47:51 6 THE COURT: I told you to reword the question. You
11:47:54 7 don't have to get his permission to do it. You have your
11:47:59 8 direction from me.

11:48:00 9 BY MR. LOEVY:

11:48:01 10 Q. Mr. Kees put himself in the scenario by claiming that he,
11:48:07 11 Hawkins, and Evans, he, Kees, Hawkins and Sumner were actually
11:48:13 12 the hit team, that's what he told you, right?

11:48:15 13 A. Initially, they intended to kill the victim.

11:48:22 14 Q. They got in a car with guns and set out to kill them but
11:48:26 15 then Derrick had to take a pee, right?

11:48:29 16 A. Well, it's more than that. I don't think I can answer
11:48:35 17 that yes or no.

11:48:37 18 Q. You have talked to Anthony Sumner about it, right?

11:48:40 19 MR. KULWIN: Objection, foundation, Judge.

11:48:42 20 THE COURT: Overruled.

11:48:44 21 THE WITNESS: Yes.

11:48:45 22 BY MR. LOEVY:

11:48:45 23 Q. You talked to Anthony Sumner about this crime in great
11:48:48 24 detail, correct?

11:48:49 25 A. Yes.

11:48:49 1 Q. It is a true statement that Anthony Sumner never once,
11:48:53 2 ever told you that Derrick Kees, Earl Hawkins, Harry Evans and
11:48:58 3 himself were involved in a plot to kill Fuddy, that's true,
11:49:01 4 isn't it?

11:49:01 5 A. I don't recall.

11:49:03 6 Q. Well, you would have made a note if that happened,
11:49:06 7 wouldn't you have? Sir, are you saying --

11:49:09 8 A. I just don't recall that.

11:49:10 9 Q. Let's slow down here.

11:49:12 10 Mr. Fields went on trial at which Anthony Sumner
11:49:15 11 pointed his finger and said he confessed, right?

11:49:18 12 A. Yes.

11:49:18 13 Q. And you're saying you don't recall whether Anthony Sumner
11:49:21 14 ever told you that he was involved in the murder?

11:49:25 15 MR. KULWIN: Judge, I am going to -- it's
11:49:27 16 argumentative, Judge.

11:49:29 17 THE COURT: Overruled.

11:49:29 18 THE WITNESS: I just don't recall if I heard it from
11:49:33 19 Kees and Sumner. I just can't recall. I know I heard it from
11:49:38 20 Kees for sure.

11:49:39 21 BY MR. LOEVY:

11:49:40 22 Q. If Anthony Sumner told you that he actually was part of
11:49:43 23 the murder plot, would you have written that down and given it
11:49:46 24 to Nate Fields?

11:49:48 25 A. I would have given it to the state's attorney.

11:49:51 1 Q. All right. So if you didn't give it to the state's
11:49:53 2 attorney, can we have a high degree of confidence that Anthony
11:49:56 3 Sumner never told you that?
11:49:56 4 A. Again, I don't recall.
11:49:59 5 Q. All right. I am going to show you your notes from your
11:50:01 6 conversation with Anthony Sumner.
11:50:03 7 A. Okay.
11:50:03 8 Q. It's Defendant's Exhibit 70. Please tell us if Anthony
11:50:09 9 Sumner ever told you he was involved in the crime with Derrick
11:50:11 10 Kees?
11:50:11 11 A. No.
11:50:31 12 Q. What's that?
11:50:31 13 A. Not in this.
11:50:33 14 Q. Do you have other notes, sir?
11:50:35 15 A. No.
11:50:35 16 Q. That's the only notes you ever -- of your conversation
11:50:37 17 with Anthony Sumner; is that correct?
11:50:39 18 A. Yes, sir.
11:50:39 19 Q. And you did not write down that Anthony Sumner said he was
11:50:42 20 involved in the plot, did you?
11:50:43 21 A. He may have --
11:50:46 22 Q. It's a yes, no, question.
11:50:49 23 A. He may have told me later.
11:50:50 24 MR. LOEVY: Objection, your Honor, that is not the
11:50:53 25 question.

11:50:54 1 THE COURT: Hang on a second. The question is
11:51:01 2 whether you wrote it down. The answer is stricken as
11:51:04 3 nonresponsive. If you want to put the question again, go
11:51:08 4 ahead.
11:51:08 5 BY MR. LOEVY:
11:51:10 6 Q. Isn't it true you've only had one and only one
11:51:13 7 conversation with Anthony Sumner about this crime?
11:51:16 8 A. That's true.
11:51:17 9 Q. And that one and only one conversation is memorialized in
11:51:22 10 your note, correct?
11:51:23 11 A. True.
11:51:24 12 Q. Tell the jury if Anthony Sumner ever told you that he,
11:51:28 13 Derrick Kees, Earl Hawkins and Harry Evans set out to kill
11:51:32 14 Fuddy? Did he tell you that?
11:51:34 15 A. Not that I recall.
11:51:35 16 Q. Are you saying that -- if it's not in your notes, it's
11:51:41 17 possible he told you that and you didn't write it down, is
11:51:44 18 that a possibility, sir?
11:51:45 19 A. I may have heard that later on in the other trials.
11:51:50 20 Q. I'm talking about your meeting with Anthony Sumner?
11:51:54 21 A. On the 14th of May?
11:51:55 22 Q. That was the only debriefing you had with Anthony Sumner,
11:51:58 23 correct?
11:51:58 24 A. No, that's correct.
11:51:59 25 Q. All right. Are you saying to the jury that it's possible

11:52:02 1 Anthony Sumner told you he was involved in the murder and you
11:52:05 2 declined to write that down, is there any possibility of that?

11:52:10 3 A. No, not on that day.

11:52:11 4 Q. Can we say conclusively that the one and only one occasion
11:52:15 5 that you debriefed Anthony Sumner he did not mention that he,
11:52:18 6 Harry Evans, Earl Hawkins and Derrick Kees set out to kill
11:52:23 7 Fuddy?

11:52:23 8 MR. KULWIN: I object, misstates the evidence,
11:52:25 9 argumentative.

11:52:26 10 THE COURT: Objection. The objection is overruled.

11:52:28 11 THE WITNESS: One more time, please.

11:52:30 12 BY MR. LOEVY:

11:52:30 13 Q. Can we say with certainty that on the one and only one
11:52:34 14 occasion you interviewed Anthony Sumner, he did not tell you
11:52:36 15 that he, Harry Evans, Earl Hawkins and Derrick Kees were part
11:52:42 16 of a team that went out to try to murder Fuddy?

11:52:44 17 A. That's correct.

11:52:45 18 Q. May I have it back, please?

11:52:49 19 A. Yes, sir.

11:52:49 20 Q. Earl Hawkins also never once told you that Anthony Sumner,
11:52:57 21 Harry Evans, Earl Hawkins and Derrick Kees went out in a car
11:53:01 22 with the intention of murdering Fuddy; isn't that correct?

11:53:07 23 A. I don't recall.

11:53:07 24 Q. Would you have written it down?

11:53:09 25 A. I may have been part of the discussions. I just don't

11:53:15 1 recall that.

11:53:15 2 Q. All right.

11:53:16 3 A. He may have said it --

11:53:19 4 Q. Have you ever heard Earl Hawkins say that Anthony Sumner
11:53:21 5 was involved in the murder, you would have taken a note,
11:53:24 6 wouldn't you have, sir?

11:53:24 7 A. Well, Hawkins eventually says he was involved in the
11:53:29 8 murder.

11:53:29 9 Q. All right. Sir, you have no notes anywhere in existence
11:53:34 10 reflecting that Derrick Kees, Earl Hawkins, Harry Evans and
11:53:38 11 Anthony Sumner supposedly went out to murder them from Earl
11:53:43 12 Hawkins conversation; isn't that true?

11:53:45 13 A. Not that I recall.

11:53:46 14 Q. How about Harry Evans, did Harry Evans ever admit that he
11:53:50 15 was part of this hit team?

11:53:51 16 A. I don't recall that either, sir. Those were years later,
11:53:57 17 those interviews.

11:53:58 18 Q. Now, the confession that Kees attributed to Nate, that was
11:54:06 19 the, yeah, it's a good exercise confession, right?

11:54:11 20 A. Who are we talking about, Kees or who?

11:54:15 21 Q. Obviously, the original confession that Anthony supposed
11:54:18 22 got from Nate at a secret meeting in the Fort was what?

11:54:21 23 A. He said that.

11:54:25 24 Q. Said what?

11:54:26 25 A. That it was good -- Sumner told me that he met I believe

11:54:32 1 it was the same day of the shooting but later on, he met Mr.
11:54:37 2 Fields over at the Fort.

11:54:39 3 Q. Just the two of them were having a private conversation?

11:54:44 4 A. He only mentioned himself and Mr. Fields.

11:54:46 5 Q. And you saw his testimony this morning. He said it was a
11:54:49 6 private conversation, just the two of them, right?

11:54:51 7 A. I saw what?

11:54:52 8 Q. His testimony was read this morning through Mr. Wharrie.
11:54:55 9 Do you remember that?

11:54:56 10 A. Yes, yes, it appears so.

11:54:58 11 Q. And what you're claiming -- what was the exact words that
11:55:01 12 implicated Mr. Fields when they had that conversation?

11:55:05 13 A. The exact words, I quote it was, I believe, yeah, it was a
11:55:13 14 good exercise.

11:55:13 15 Q. Now, you're talking to Derrick Kees some four years later,
11:55:16 16 right?

11:55:16 17 A. About four or five years later.

11:55:18 18 Q. And Derrick is now trying to be useful to law enforcement,
11:55:21 19 right?

11:55:21 20 A. He's decided to cooperate. Actually, he decided to
11:55:26 21 cooperate before that.

11:55:28 22 Q. Okay. Well, when did he decide to start cooperating?

11:55:31 23 A. Strike that. I was thinking about Hawkins. Kees decided
11:55:40 24 to cooperate in I think it was --

11:55:45 25 Q. March 89, right?

11:55:48 1 A. 89 we met him.

11:55:50 2 Q. When Kees was talking to you about, you know, ways he
11:55:53 3 could be -- he was talking to you about ways he could be
11:55:55 4 useful to law enforcement, correct?

11:55:56 5 A. Well, there was an initial meeting I had with Kees along
11:56:01 6 with Detective O'Callaghan.

11:56:03 7 Q. All right. Did you say to Kees or did O'Callaghan say to
11:56:06 8 Kees in your presence, hey, did Nate say it was a good
11:56:10 9 exercise?

11:56:10 10 A. Well.

11:56:13 11 Q. Can you answer that question?

11:56:14 12 A. There's different conversations. That's what I'm trying
11:56:18 13 to point out. We're talking about -- I just need some
11:56:24 14 clarity.

11:56:24 15 MR. KULWIN: Objection.

11:56:25 16 BY MR. LOEVY:

11:56:25 17 Q. At any conversation, did you ever say or hear O'Callaghan
11:56:30 18 say to Mr. Kees, hey, did Nate say it was a good exercise?

11:56:33 19 A. I don't recall.

11:56:34 20 Q. All right. If Kees was asked, hey, did Nate say it was a
11:56:40 21 good exercise, what was Kees' response, yes?

11:56:43 22 MR. BURNS: Objection, form of the question, your
11:56:50 23 Honor.

11:56:51 24 THE COURT: Sustained.

11:56:51 25 BY MR. LOEVY:

11:56:53 1 Q. All right. The confession that Kees later claimed Nate
11:57:00 2 gave, was it a different location with different people,
11:57:04 3 correct?
11:57:04 4 A. That Kees provided us?
11:57:05 5 Q. Yeah.
11:57:06 6 A. Yes.
11:57:07 7 Q. And it was the exact same words, wasn't it?
11:57:09 8 A. Yes. Well, there were others that said that later too.
11:57:13 9 MR. LOEVY: Your Honor, I move to strike that.
11:57:15 10 THE WITNESS: I'm sorry. I'm sorry.
11:57:16 11 THE COURT: The follow-up comment is stricken. The
11:57:19 12 jury is directed to disregard it. It was not responsive to
11:57:22 13 the question.
11:57:22 14 BY MR. LOEVY:
11:57:22 15 Q. When you say there were others, those were cooperating
11:57:25 16 witnesses who were getting huge breaks on their deal --
11:57:28 17 actually, nobody said it was a good exercise. Who else said
11:57:30 18 it was a good exercise?
11:57:33 19 A. Hawkins.
11:57:34 20 Q. He got a big break on his deal to say it?
11:57:38 21 A. No.
11:57:39 22 MR. KULWIN: Objection, Judge.
11:57:40 23 MR. LOEVY: May I ask a question, your Honor?
11:57:42 24 THE COURT: I got to deal with the objection first.
11:57:44 25 The objection is overruled. The answer no can stand.

11:57:46 1 BY MR. LOEVY:

11:57:47 2 Q. Hawkins never said he heard Nate say it was a good
11:57:50 3 exercise, did he?

11:57:50 4 A. Yes, he did.

11:57:51 5 Q. And is there a report on that, a note?

11:57:53 6 A. I think he mentioned it to us later, but he just said it
11:58:02 7 yesterday.

11:58:02 8 MR. LOEVY: Your Honor, can we focus on the question,
11:58:06 9 your Honor.

11:58:06 10 THE COURT: He is not asking about testimony at the
11:58:08 11 trial. The question is is there a report or a note on that.
11:58:12 12 That's the pending question.

11:58:13 13 THE WITNESS: I think there is somewhere.

11:58:14 14 BY MR. LOEVY:

11:58:14 15 Q. There should be, right?

11:58:15 16 A. Well, yes, there is a note somewhere.

11:58:17 17 Q. That says Earl Hawkins said that Nate gave that
11:58:21 18 confession?

11:58:22 19 MR. KULWIN: Your Honor, I object. I'd like to be
11:58:23 20 heard.

11:58:25 21 THE COURT: Okay. Maybe I'm missing something. Let
11:58:27 22 me see you at sidebar.

11:58:38 23 (The following proceedings were had at sidebar outside the
11:58:40 24 hearing of the jury:)

11:58:40 25 THE COURT: I have been told many times by the court

11:58:43 1 reporter that happen that the sidebar are virtually
11:58:48 2 incomprehensible and it's largely because everybody is talking
11:58:50 3 at once and people aren't talking towards the microphone. We
11:58:55 4 actually tweak up the microphone and it's still not working.
11:58:59 5 What's your point, Mr. Kulwin.

11:59:00 6 MR. KULWIN: My point, Judge, I will talk slowly, ask
11:59:04 7 is that there are probably written reports as part of the
11:59:09 8 federal investigation that are probably filled with all sorts
11:59:13 9 of other things, that would be my guess, none of that was part
11:59:17 10 -- that would be my reasonable belief, okay. They were not --
11:59:22 11 you cannot get grand jury material, I don't believe, from the
11:59:25 12 federal government on all this stuff. The inference is wrong.
11:59:29 13 It's unfair. You can't tell witnesses you can't talk about
11:59:32 14 all the other murders, you have to be very, very careful what
11:59:35 15 you say but if you're asked is there one report about this
11:59:38 16 anywhere written down, he doesn't know what to do.

11:59:41 17 THE COURT: The question on the table has to do with
11:59:42 18 Hawkins making a statement about whether Mr. Fields made this
11:59:46 19 good exercise comment is that right?

11:59:47 20 MR. LOEVY: Yes, and there is no such report and we
11:59:49 21 have his notes, we have his Hawkins debriefing notes, pages,
11:59:53 22 dozens of pages. I am not opening the door to anything to
11:59:56 23 say, there is no note and no report that this new story
12:00:00 24 Hawkins said on the stand or he might have heard that, there
12:00:04 25 is nothing remotely in basis in his objection. It's a limited

12:00:07 1 question, isn't it true there are no notes or report that
12:00:10 2 reflects this. And why would that open the door to anything?
12:00:13 3 Why would that open the door to oh, there's a lot of notes,
12:00:17 4 there's a lot of reports.

12:00:19 5 THE COURT: Mr. Kulwin.

12:00:19 6 MR. KULWIN: Is Mr. Loevy representing that he
12:00:21 7 reviewed every 302 that every FBI agent and every ATF agent
12:00:26 8 wrote on this case in the El Rukn investigation? If he is,
12:00:27 9 that's one thing. But --

12:00:27 10 THE COURT: Wait a second. Wait a second. He's
12:00:30 11 asking the guy a question. He's asking the guy a question.
12:00:34 12 Honestly, he's asked it four times and he hasn't gotten an
12:00:38 13 answer yet. He basically heard Hawkins say that. The
12:00:42 14 question is did he write it down anywhere. That's the way you
12:00:45 15 are going to have to rephrase it. Did he write it down
12:00:48 16 anywhere?

12:00:48 17 MR. KULWIN: Did he write it?

12:00:53 18 THE COURT: That's how you're going to have to
12:00:53 19 rephrase it. Okay.

12:00:54 20 (The following proceedings were had in open court in the
12:00:58 21 presence and hearing of the jury:)

12:00:58 22 MR. LOEVY: May I continue, your Honor?

12:01:01 23 THE COURT: Go ahead.

12:01:01 24 BY MR. LOEVY:

12:01:02 25 Q. Are you claiming, sir, that Hawkins in your presence said

12:01:05 1 that Nate confessed it was a good exercise?

12:01:07 2 A. Yes, sir.

12:01:08 3 Q. Okay. Would you -- did you create a police report?

12:01:11 4 A. No, sir.

12:01:11 5 Q. Did you create a note?

12:01:14 6 A. Yes, sir.

12:01:14 7 Q. Where is that note?

12:01:16 8 A. At that time I was with -- assigned with the U.S.

12:01:25 9 Attorney's Office and we had conversations throughout, I think

12:01:30 10 it started in '88, 89, and we prepared notes there.

12:01:35 11 Q. All right. And we have those notes at this trial, do we

12:01:40 12 not?

12:01:40 13 A. I don't know. Do we?

12:01:41 14 Q. Have you reviewed the trial exhibits?

12:01:44 15 A. Not all of them.

12:01:45 16 Q. Have you reviewed your notes to see that there is or is

12:01:48 17 not this statement that you are attributing to Hawkins?

12:01:50 18 A. No.

12:01:50 19 Q. But you're saying they should be in your notes, right?

12:01:54 20 MR. BURNS: Objection, your Honor.

12:01:55 21 THE COURT: Overruled. He's testified.

12:01:58 22 BY MR. LOEVY:

12:01:59 23 Q. Is that true, they should be in your notes?

12:02:01 24 MR. BURNS: Objection?

12:02:01 25 THE COURT: That's the question I just sustained an

12:02:03 1 answer to.

12:02:04 2 MR. LOEVY: I thought you said overruled. I misheard
12:02:07 3 you, I apologize.

12:02:09 4 THE COURT: Sustained.

12:02:10 5 THE COURT: I misspoke. I said overruled. I meant
12:02:13 6 to say sustained. You heard me right. I said it wrong.

12:02:16 7 BY MR. LOEVY:

12:02:17 8 Q. Let's he talk about?

12:02:20 9 THE COURT: One of those rare times I apologize to
12:02:23 10 the lawyer. The jurors probably picked up on that.

12:02:26 11 MR. LOEVY: It's probably my fault for not reading
12:02:28 12 your mind.

12:02:29 13 THE COURT: You are supposed to be able to read my
12:02:31 14 mind.

12:02:31 15 BY MR. LOEVY:

12:02:31 16 Q. The other piece that Derrick Kees provided in court was
12:02:34 17 oh, I remember this one time that Nate told me in September
12:02:39 18 1983 that he wanted to join the hit team or words to that
12:02:42 19 effect. Do you remember him saying that yesterday?

12:02:44 20 A. Yes.

12:02:44 21 Q. Isn't it true that 2013, some 25 or 8 years after the
12:02:50 22 conversation supposedly took place was the first time Derrick
12:02:55 23 Kees ever made an allegation that oh, yeah, Nate told me in
12:02:59 24 September 1983 that he wanted, he loved what you all are doing
12:03:03 25 with the chief and he wanted a part of it?

12:03:05 1 MR. KULWIN: Objection, Judge, lacks foundation. How
12:03:07 2 would he know.

12:03:07 3 THE COURT: Sustained. You are not going to be able
12:03:09 4 to ask that question that way.

12:03:10 5 BY MR. LOEVY:

12:03:10 6 Q. You are no not aware of any prior time Derrick said that
12:03:15 7 before 2013, correct?

12:03:16 8 A. I believe he did say that.

12:03:18 9 Q. Where and when, sir?

12:03:19 10 A. It was in our interviews.

12:03:21 11 Q. Would that be in your notes?

12:03:23 12 MR. KULWIN: Can he finish the question, Judge?

12:03:25 13 THE COURT: Finish the answer. It was in the notes,
12:03:28 14 he said. Go ahead and finish your answer. The question was
12:03:32 15 with where and when did he say it? You started to say it was
12:03:36 16 in your notes or interviews or something along those lines.

12:03:39 17 BY MR. LOEVY:

12:03:40 18 Q. In your notes?

12:03:40 19 A. We had a number of interviews with him throughout 1988.

12:03:43 20 Q. Showing you Defendant's Exhibit 171, these are your notes
12:03:58 21 dated May the 4th, 1989, right, sir?

12:04:02 22 A. The first page is.

12:04:06 23 Q. All right. There's other notes, right?

12:04:08 24 A. Yes, sir.

12:04:09 25 Q. All right. Show me or tell the jury where it says that

12:04:14 1 Nate wanted to join the team?

12:04:16 2 MR. KULWIN: Can we have the date of the notes,
12:04:18 3 Judge?

12:04:19 4 THE COURT: It's Defendant's Exhibit 171 as Mr. Loevy
12:04:22 5 said a second ago dated May 4th, 1989.

12:04:26 6 MR. KULWIN: Sorry, Judge. I apologize.

12:04:30 7 THE WITNESS: This.

12:04:43 8 BY MR. LOEVY:

12:04:44 9 Q. It doesn't say it, does it, sir?

12:04:45 10 A. It doesn't say it, no, no, but there were other
12:04:48 11 conversations with him.

12:04:50 12 Q. But this was the first one, May 4th, 1989, right?

12:04:58 13 A. With?

12:04:59 14 Q. With Derrick Kees?

12:04:59 15 A. With Derrick Kees, yes, sir.

12:05:00 16 Q. And he told you his sorry that he was part of the hit team
12:05:03 17 and Nate confessed to him, right?

12:05:05 18 A. Yes, sir.

12:05:05 19 Q. And he did not tell you, oh, yeah, there was a time in
12:05:08 20 1983 that Nate said I want to join the hit team and I want to
12:05:12 21 be part of what you all were doing, he didn't tell you that
12:05:14 22 when he told you the story the first time, right?

12:05:16 23 A. Not the first time, no, sir.

12:05:18 24 Q. In fact, this note on May the 4th, 1989, is not day one,
12:05:23 25 is it?

12:05:23 1 A. That --

12:05:26 2 Q. Day one was March 1989, right? This is more like day 45?

12:05:33 3 MR. KULWIN: Objection, Judge. No foundation.

12:05:36 4 THE WITNESS: Could you show me those notes? March
12:05:39 5 89.

12:05:40 6 BY MR. LOEVY:

12:05:40 7 Q. By May 89, Derrick had been cooperating for close to two
12:05:43 8 months at the MCC, right?

12:05:46 9 MR. KULWIN: Objection, Judge.

12:05:46 10 THE COURT: What's the basis for the objection.

12:05:48 11 MR. KULWIN: No foundation. Just ask him if he
12:05:50 12 knows.

12:05:50 13 MR. LOEVY: Objection, your Honor.

12:05:51 14 THE COURT: If you don't know, you can just say you
12:05:54 15 don't know.

12:05:55 16 THE WITNESS: I don't know the question.

12:05:57 17 THE COURT: Okay. Ask the question again.

12:05:58 18 BY MR. LOEVY:

12:05:59 19 Q. Derrick started being a cooperating witness in March 89,
12:06:03 20 right?

12:06:03 21 A. I am not sure of the exact date.

12:06:04 22 Q. All right. Leaving aside the exact date, he got taken to
12:06:08 23 the MCC where he and the other cooperators interacted on the
12:06:11 24 sixth floor for two years, correct?

12:06:13 25 MR. KULWIN: Objection, Judge, lacks foundation, he

12:06:17 1 was taken to the MCC.

12:06:18 2 MR. LOEVY: Objection to the speaking objection, your
12:06:20 3 Honor.

12:06:20 4 THE COURT: The objection is overruled.

12:06:26 5 THE WITNESS: As I best recall, he wasn't put in the
12:06:29 6 MCC right away. I think he was sent out to Rock County.

12:06:33 7 BY MR. LOEVY:

12:06:34 8 Q. It's your recollection that I am asking. He was sent
12:06:37 9 somewhere?

12:06:37 10 A. He was sent off to Rock County I think in Wisconsin.

12:06:40 11 Q. All right. Now, you were asked last night about the email
12:06:45 12 and you did say that you didn't know there was an issue with
12:06:49 13 Derrick Kees' sentence break coming through?

12:06:51 14 A. The email that I received about the --

12:06:56 15 Q. Right?

12:06:56 16 A. The motion.

12:06:57 17 Q. The government sent you a copy of the motion to cut
12:07:05 18 Derrick Kees' sentence by 12 years?

12:07:07 19 A. Yes, sir.

12:07:08 20 Q. And you got that on November 17th, the day the trial
12:07:13 21 started?

12:07:14 22 A. Yes, sir.

12:07:14 23 Q. And you didn't know there had been an issue, right?

12:07:16 24 A. Yes, I had no idea. I thought he was going to come in
12:07:20 25 like he did the last time to testify.

12:07:22 1 Q. If the email and showing you again Plaintiff's Exhibit
12:07:26 2 1001, if the email is dated at 3/25 sending you a copy of the
12:07:33 3 government's motion asking to cut Kees' sentence in exchange
12:07:36 4 for his testimony, you responded at 4:53 that same afternoon,
12:07:41 5 right?

12:07:41 6 A. Yes, sir.

12:07:43 7 Q. O'Callaghan probably got off the stand around 4:45?

12:07:47 8 MR. KULWIN: Objection, Judge, as to when O'Callaghan
12:07:49 9 got off the stand.

12:07:50 10 MR. LOEVY: Established.

12:07:52 11 MR. LOEVY: Were you in court?

12:07:54 12 THE COURT: I am sustaining the objection anyway.

12:07:54 13 BY MR. LOEVY:

12:07:56 14 Q. You didn't suggest in your response that there was any
12:07:58 15 uncertainty or unclarity on your part about why the government
12:08:01 16 was filing this motion, did you?

12:08:03 17 A. It was clear in my mind why they were filing the motion,
12:08:08 18 because there was a problem having Derrick Kees.

12:08:09 19 THE COURT: You need to --

12:08:13 20 THE WITNESS: I'm sorry. Please ask the question
12:08:15 21 again.

12:08:16 22 BY MR. LOEVY:

12:08:16 23 Q. I am going to switch to another Kees topic?

12:08:19 24 A. Yes, sir.

12:08:19 25 Q. Now, you took information from Derrick Kees, correct?

12:08:21 1 A. Yes, sir.

12:08:22 2 Q. Were you working for the Chicago Police Department?

12:08:25 3 A. Detailed to the U.S. Attorney's Office.

12:08:28 4 Q. All right. Did you create a Chicago police report
12:08:32 5 detailing your conversations with Derrick Kees about the
12:08:36 6 Smith/Hickman murder?

12:08:36 7 MR. KULWIN: Objection, I am going to object and ask
12:08:38 8 to be heard.

12:08:40 9 THE COURT: Okay.

12:08:45 10 (The following proceedings were had at sidebar outside the
12:08:48 11 hearing of the jury:)

12:08:48 12 THE COURT: I try not to be like some of my
12:09:02 13 colleagues that use phrases over and over again but it
12:09:06 14 happens. Anybody watch Seinfeld, remember the serenity now?

12:09:13 15 Here is my question: When a Chicago police officer
12:09:14 16 is detailed to a federal task force, is he required to prepare
12:09:19 17 Chicago police reports? My hunch would be no. The hunch is
12:09:24 18 just kind of based on 35, four years of experience, 35 let's
12:09:30 19 say.

12:09:30 20 MR. LOEVY: I don't know. I guess you know the
12:09:32 21 answer to that question and -- he took a note in 1989
12:09:37 22 suggesting that Anthony Sumner was involved in the murder,
12:09:40 23 Nate at the time was on death row. I don't care who is
12:09:43 24 signing his paychecks. He is still working for the Chicago
12:09:46 25 Police Department, he took notes, he didn't give them to the

12:09:48 1 state's attorney, he gave them to a different law enforcement,
12:09:51 2 that's not discharging your braid obligation.

12:09:53 3 THE COURT: Hold on a second. We are talking about
12:09:55 4 just to back up a second here, what we are talking about is
12:09:59 5 what he learned about what in 1989 again?

12:10:02 6 MR. LOEVY: Derrick Kees told him Anthony Sumner was
12:10:04 7 involved in the murder plot. That's extremely exculpatory.

12:10:07 8 THE COURT: Got it. All right. So I don't --
12:10:10 9 honestly, but I think the problem with the question is that it
12:10:14 10 suggests that preparing a Chicago police report was some
12:10:19 11 intermediate required step. I mean, I don't really see a
12:10:22 12 problem with the subject matter. You are going to have to
12:10:24 13 leave that part out of it because my pretty strong sense,
12:10:29 14 again, just from past experience, is that when one of these
12:10:33 15 officers is detailed to a federal task force, the paper flow
12:10:35 16 goes to the federal task force, it doesn't get put in the CPD
12:10:39 17 file.

12:10:39 18 MR. LOEVY: That's our point.

12:10:40 19 THE COURT: I understand. But your point, as you
12:10:42 20 just described it to me, sir, is that he didn't do what was
12:10:47 21 necessary to get this information to Mr. Fields or his defense
12:10:51 22 attorney. Okay?

12:10:52 23 MR. LOEVY: Yes.

12:10:52 24 THE COURT: You can make that point. You cannot make
12:10:54 25 the point that he did not prepare a quote Chicago police

12:10:59 1 report. If that's not clear, there is nothing more I can do.

12:11:05 2 (The following proceedings were had in open court in the
12:11:07 3 presence and hearing of the jury:)

12:11:07 4 THE COURT: All right. The objection to the question
12:11:15 5 is sustained. You can proceed with another question as we
12:11:17 6 discussed.

12:11:18 7 BY MR. LOEVY:

12:11:18 8 Q. All right. One of the problems with the case was that
12:11:23 9 Hank Andrews had a white car isn't that true, sir?

12:11:28 10 A. At what time?

12:11:35 11 Q. The witnesses who saw the bad guys drive away saw a blue
12:11:41 12 car, right?

12:11:41 13 A. Yes, sir.

12:11:41 14 Q. And Hank had a white car, right?

12:11:43 15 A. He had a blue car, Cadillac.

12:11:46 16 Q. Sorry, blue. He had a white car?

12:11:48 17 A. He had a blue Cadillac.

12:11:50 18 Q. I'm sorry?

12:11:51 19 MR. KULWIN: Objection.

12:11:52 20 THE COURT: He's answered your question. Now ask
12:11:53 21 another one.

12:11:54 22 BY MR. LOEVY:

12:11:54 23 Q. All right. You needed an explanation for how his blue car
12:11:57 24 became white, right?

12:12:00 25 MR. BURNS: Objection to the form of the question,

12:12:02 1 your Honor?

12:12:02 2 THE COURT: Overruled. I mean, I think the problem
12:12:04 3 with your question is you just said had generally as opposed
12:12:09 4 to one time or another.

12:12:10 5 BY MR. LOEVY:

12:12:10 6 Q. Did anybody check Hank's white car to see if there was
12:12:14 7 blue paint underneath it?

12:12:16 8 A. I don't recall.

12:12:17 9 Q. Wouldn't that have made sense if the police were saying
12:12:22 10 that Hank's car wasn't the right color because he painted it,
12:12:26 11 all you had to do was look under the paint, right?

12:12:29 12 A. Is that your question?

12:12:33 13 Q. Yes.

12:12:33 14 A. No, sir.

12:12:34 15 Q. All right. Let's talk about Anthony Sumner's cooperation.
12:12:45 16 Now, he also told you that Nate was involved in the murder of
12:12:51 17 Joe White and Dee Eggars Vaughn, correct?

12:12:55 18 A. Along with himself.

12:12:56 19 Q. Yep. But the problem was the kids only saw two people
12:13:00 20 commit the murder, right?

12:13:01 21 A. They could only view two people.

12:13:05 22 Q. I mean they watched their parents being tied up and
12:13:10 23 stabbed by two offenders?

12:13:12 24 A. They had a limited view of what they could see.

12:13:14 25 Q. The original police report didn't say anything about a

12:13:16 1 limited view, did they?

12:13:17 2 A. I believe they did, sir.

12:13:18 3 Q. All right. Isn't it true that what Sumner described was

12:13:25 4 three men actually participating in the crime, stabbing,

12:13:29 5 shooting, tying, that's what Sumner's description was, right?

12:13:32 6 A. He said that -- I believe he said that he tied up Joe and

12:13:43 7 Nathson tied up Dee Eggars.

12:13:45 8 Q. And then early shot them in the head?

12:13:49 9 A. Well, I think -- no, early stabbed them.

12:13:53 10 Q. Earl stabbed them. They each claimed the other one

12:13:57 11 stabbed them, right?

12:13:58 12 A. No, no, I think that -- I think that Earl said that he

12:14:03 13 stabbed them and shot them.

12:14:04 14 Q. All right. But in any event, the kids saw two people do

12:14:08 15 this crime, right? Right?

12:14:13 16 A. They only saw two.

12:14:14 17 Q. All right. Did that give you reason to doubt whether

12:14:17 18 maybe Sumner was lying about Nate Fields being the third guy?

12:14:21 19 A. No, sir.

12:14:22 20 Q. When did Hawkins first tell you that Nate was not involved

12:14:29 21 in that crime?

12:14:29 22 A. The first time I learned it was.

12:14:35 23 Q. The question was when did Hawkins first tell you, not when

12:14:38 24 you learned it.

12:14:41 25 MR. KULWIN: Judge, I object. It assumes that he

12:14:46 1 talked to Hawkins before Hawkins --

12:14:49 2 THE COURT: I object to the objection as overruled.
12:14:52 3 Assumes facts not in evidence.

12:14:55 4 THE WITNESS: Ask the question again, please.

12:14:58 5 THE COURT: When did Hawkins first tell you, not when
12:15:00 6 you learned it. When did he first tell you as opposed to when
12:15:04 7 you first learned it.

12:15:05 8 THE WITNESS: I don't recall, sir. I don't recall
12:15:08 9 when he first told me.

12:15:09 10 BY MR. LOEVY:

12:15:09 11 Q. Were you disturbed that Mr. Fields had been arrested and
12:15:14 12 prosecuted or, you know, charged with a double murder if he
12:15:17 13 had nothing to do with it?

12:15:18 14 A. Of course.

12:15:19 15 Q. Did that cause you to question maybe the same guy who lied
12:15:24 16 about him about that crime is lying about him about the other
12:15:27 17 crime?

12:15:27 18 A. No, because we had cooperating evidence in the other
12:15:33 19 crimes.

12:15:34 20 MR. LOEVY: Your Honor, we'd move to strike the
12:15:36 21 second part of that.

12:15:37 22 THE COURT: Everything after no is stricken.

12:15:39 23 BY MR. LOEVY:

12:15:40 24 Q. You did have other corroborating evidence in the form of
12:15:43 25 eyewitness identifications, right?

12:15:44 1 A. At that time.

12:15:46 2 MR. KULWIN: Foundation, at what time?

12:15:49 3 THE COURT: Yeah. You got to set a time. As of
12:15:52 4 when, in other words.

12:15:53 5 BY MR. LOEVY:

12:15:54 6 Q. When Nate went on trial for capital murder, the only
12:15:58 7 corroboration for Anthony Sumner was some kids who saw Earl
12:16:04 8 Hawkins supposedly and Nate Fields do the shooting?

12:16:08 9 MR. KULWIN: I am going to object. Argumentative.

12:16:10 10 THE COURT: Overruled. Overruled. He can answer.

12:16:13 11 BY MR. LOEVY:

12:16:14 12 Q. Do you remember the question?

12:16:14 13 A. No.

12:16:15 14 Q. In 1986 when Nate went on trial for capital murder, the
12:16:21 15 only corroboration you had for Anthony Sumner was those kids
12:16:25 16 who were saying that they saw Earl and Nate with the masks
12:16:29 17 from the distance as the shooters, right?

12:16:32 18 A. I believe there were three witnesses.

12:16:34 19 Q. The eyewitnesses, right?

12:16:35 20 A. Yes, sir.

12:16:36 21 Q. Now, I want to talk to you about your interview of Anthony
12:16:49 22 Sumner. You don't dispute that there was only one and one
12:16:53 23 debriefing, correct?

12:16:54 24 A. Correct, sir, with me.

12:16:57 25 Q. With you?

12:16:59 1 A. Yes, sir.

12:16:59 2 Q. And what was the date of your one and only one interview
12:17:02 3 with Anthony Sumner?

12:17:02 4 A. 14 May 85.

12:17:06 5 Q. Was the subject of the Smith/Hickman murder discussed
12:17:09 6 during that briefing?

12:17:10 7 A. Yes, sir.

12:17:12 8 Q. And that is then the only time you've ever spoken to
12:17:16 9 Anthony Sumner about that subject was also May 14th, right?

12:17:19 10 A. That I personally spoke to him, yes, sir.

12:17:21 11 Q. Yes.

12:17:22 12 Were you taking notes when he was telling you about
12:17:24 13 the Smith/Hickman murder?

12:17:25 14 A. Yes, sir.

12:17:26 15 Q. Were you taking notes as he's telling you the details?

12:17:31 16 A. Yes, sir. Well, not initially. I had him tell me the
12:17:42 17 story a couple times first.

12:17:44 18 Q. And then you wrote it down after the conversation?

12:17:46 19 A. The initial conversations, it's always better to talk to
12:17:50 20 someone first before you are writing down notes.

12:17:55 21 Subsequently, I did write down notes when I was talking to him
12:17:58 22 afterwards a number of times and went over the account with
12:18:02 23 him.

12:18:02 24 Q.

12:18:05 25 MR. LOEVY: Your Honor, if you would entertain it,

12:18:07 1 this would be a better place to take a break.

12:18:10 2 THE COURT: I can't because it would basically
12:18:13 3 require shaving 15 minutes off our day. I have another case
12:18:16 4 that's up at 1:30 that's probably going to take 10 minutes.
12:18:19 5 Sorry.

12:18:19 6 BY MR. LOEVY:

12:18:20 7 Q. I am going to show you a copy of Defendant's Exhibit 72.
12:18:23 8 If you could turn to page 11, which is tabbed for you.

12:18:34 9 THE COURT: That would be my suggestion actually is
12:18:37 10 just keep them.

12:18:38 11 THE WITNESS: Okay.

12:18:39 12 THE COURT: It's not a criticism. You're going to be
12:18:41 13 looking at stuff.

12:18:42 14 THE WITNESS: Okay, sir.

12:18:43 15 BY MR. LOEVY:

12:18:44 16 Q. If you could turn to page 11 and 12.

12:18:49 17 A. Hang on one second, please.

12:19:02 18 THE COURT: I might suggest that after the lunch
12:19:05 19 break or even now the more felicitous way of doing this would
12:19:09 20 be to put it on the screen. That's the whole reason --

12:19:12 21 BY MR. LOEVY:

12:19:14 22 Q. Can you see the screen, sir?

12:19:15 23 A. Yeah, I can see the screen.

12:19:18 24 THE COURT: Let me put the ELM0 on. Yeah, you can
12:19:22 25 see the screen. I think it's going to be easier probably for

12:19:25 1 you to look at the screen. If you want to go closer to it,
12:19:28 2 that's fine.

12:19:28 3 THE WITNESS: I can see it. Thank you.

12:19:31 4 BY MR. LOEVY:

12:19:32 5 Q. All right. Sir, these are your notes, are they not, sir?

12:19:39 6 A. Yes, sir.

12:19:39 7 Q. And at the deposition, you denied these were your notes,
12:19:42 8 correct?

12:19:42 9 A. I denied they were my notes?

12:19:47 10 Q. You submitted an the errata sheet correcting your
12:19:50 11 testimony saying you got confused, but that they were your
12:19:53 12 notes, correct?

12:19:54 13 A. Yeah, these are my notes.

12:19:56 14 Q. And you corrected your sworn testimony by the errata
12:20:00 15 sheet, correct?

12:20:01 16 A. I don't recall that. I know that these are my notes I am
12:20:05 17 looking at. That's my handwriting.

12:20:08 18 Q. All right. Let's walk through your notes of the Sumner
12:20:11 19 interview on -- this is your notes of May 14th, 1985, correct?

12:20:17 20 A. Yes, sir.

12:20:18 21 Q. All right. Talman Hickman, Jerome Fuddy, 706 East 39th
12:20:25 22 Street, 28th of April, 017 hours. Do you see that?

12:20:29 23 A. Yes, sir.

12:20:29 24 Q. It looks like you had access to the file at the time you
12:20:32 25 were interviewing Anthony Sumner?

12:20:33 1 A. I didn't have that information at the time.

12:20:35 2 Q. This is an RD number, isn't it?

12:20:37 3 A. Yeah, I called the office to find out that information.

12:20:40 4 Q. The question was this is an RD number, isn't it, your

12:20:43 5 Honor?

12:20:44 6 A. Yes, sir, that is an RD number.

12:20:45 7 Q. All right. And it shows Nathson Fields, George Carter as

12:20:52 8 the shooter, Hank Andrews as the driver, Earl Hawkins as the

12:20:56 9 setup. You're claiming this is what he told you, right?

12:20:58 10 A. That's what he told me.

12:20:59 11 Q. A couple of days after the shooting, he had a conversation

12:21:02 12 with Hawkins at this location?

12:21:05 13 A. Yes.

12:21:06 14 Q. Earl got Fields and Carter?

12:21:10 15 A. Yes.

12:21:10 16 Q. Now, tell the jury where in your notes it says that Nate

12:21:15 17 Fields confessed to him, the good exercise confession.

12:21:20 18 A. That was in the subsequent interview.

12:21:23 19 Q. I asked where it is in your notes?

12:21:25 20 A. In this note?

12:21:26 21 Q. On May 14th, 1985, that Sumner told you that Nate

12:21:30 22 confessed?

12:21:31 23 A. It's in the other note I gave you.

12:21:33 24 Q. Not in the in your notes?

12:21:37 25 MR. BURNS: Objection?

12:21:38 1 MR. KULWIN: Objection, Judge, asked and answered.

12:21:40 2 THE COURT: Sustained.

12:21:41 3 BY MR. LOEVY:

12:21:41 4 Q. Is it in Defendant's Exhibit 72 that Nate supposedly

12:21:44 5 confessed to this murder?

12:21:46 6 A. This exhibit, no.

12:21:55 7 Q. These are your notes, are they not?

12:21:57 8 MR. KULWIN: Objection, asked and answered, Judge.

12:21:59 9 THE COURT: Sustained.

12:22:00 10 BY MR. LOEVY:

12:22:00 11 Q. All right. Let's take a look at your general progress

12:22:03 12 report, Defendant's Exhibit 70. You created this as well,

12:22:09 13 right?

12:22:09 14 A. Yes, sir.

12:22:09 15 Q. And you're saying you created this on the same day you

12:22:12 16 created Defendant's Exhibit 70?

12:22:14 17 A. Same day, same evening or afternoon.

12:22:17 18 THE COURT: Mr. Loevy, why don't you retrieve those

12:22:19 19 documents.

12:22:20 20 MR. LOEVY: All right.

12:22:21 21 BY MR. LOEVY:

12:22:22 22 Q. The purpose of general -- may I, sir?

12:22:23 23 A. Yeah, I got some on the floor.

12:22:25 24 Q. That's okay.

12:22:26 25 The purpose of general progress reports is for police

12:22:33 1 detectives to take notes, correct?

12:22:34 2 A. Yes, sir.

12:22:38 3 Q. In fact, the old rule was you're allowed to take notes on

12:22:41 4 scraps of paper and when they did the new special order,

12:22:44 5 detectives are required to take notes directly on the general

12:22:47 6 progress reports, correct?

12:22:48 7 A. No, you're incorrect.

12:22:50 8 Q. Were you here when lieutenant Duffin and Mr. Hickey

12:22:54 9 testified?

12:22:55 10 A. Not Duffin.

12:22:57 11 Q. Were you here for Hickey, though?

12:22:59 12 A. Yes, sir.

12:23:00 13 Q. Do you disagree with the suggestion that the reason GPRs

12:23:06 14 were created was so that detectives are supposed to take their

12:23:09 15 notes directly into GPRs, was that the practice?

12:23:11 16 A. No, you can take your notes on other paper.

12:23:16 17 Q. So the special order in the terms of the special order

12:23:21 18 required notes to be taken in the GPR, correct?

12:23:23 19 A. I don't -- you can take notes in the GPRs.

12:23:27 20 Q. The question was if the special order required it?

12:23:29 21 A. No, it doesn't require. I mean, it suggests maybe to do

12:23:35 22 it, but that's not the only way you can take notes. That's

12:23:37 23 what I'm trying to explain.

12:23:38 24 Q. All right. You created this general progress report after

12:23:43 25 the fact, didn't you, sir?

12:23:45 1 MR. BURNS: Objection.

12:23:47 2 THE COURT: Overruled.

12:23:47 3 MR. BURNS: Foundation, your Honor.

12:23:48 4 THE COURT: Overruled.

12:23:54 5 THE WITNESS: After the fact?

12:23:55 6 BY MR. LOEVY:

12:23:56 7 Q. Yes?

12:23:56 8 A. The interviews that I conducted on 14 May 85.

12:23:59 9 Q. You took your notes which is Defendant's Exhibit 72?

12:24:03 10 A. Yes.

12:24:03 11 Q. And you rewrote them as a general progress report,

12:24:06 12 correct?

12:24:06 13 A. I had another interview with him and went over it slowly,

12:24:15 14 I wanted to get the information on who the offenders were and

12:24:18 15 get that out to my team.

12:24:19 16 Q. Sir, you did say you had one and only one interview with

12:24:22 17 Anthony Sumner, did you tell that jury this, did you?

12:24:26 18 A. No. I had --

12:24:30 19 Q. That's your answer. You had more than one interview with

12:24:33 20 Anthony Sumner, sir?

12:24:33 21 A. The only time I interviewed him was on 14 May 85 when --

12:24:39 22 Q. All right. Let's take a look at the first line of your

12:24:42 23 notes. It says, a couple of days after the shooting, he had a

12:24:48 24 conversation with Hawkins at 6416 Kenwood, correct?

12:24:52 25 A. Yes.

12:24:53 1 Q. Let's take a look at your GPR report. It says, quote, a
12:24:58 2 couple of days after shooting, he had a conversation with Earl
12:25:02 3 Hawkins at his apartment located at 6416 south Kenwood,
12:25:06 4 correct?
12:25:06 5 A. Yeah, but then I go into the narrative.
12:25:11 6 MR. KULWIN: Objection.
12:25:11 7 THE COURT: He can only do one part of it at a time.
12:25:14 8 The objection is overruled.
12:25:15 9 BY MR. LOEVY:
12:25:15 10 Q. That's what it says, right?
12:25:16 11 A. That's what it says.
12:25:18 12 Q. What you did was you took your notes, a couple of days
12:25:22 13 after the shooting, he had a conversation with Hawkins, and
12:25:24 14 you rewrote them into the GPR, a couple of days after the
12:25:28 15 shooting, he had a conversation with Earl Hawkins at his
12:25:30 16 apartment located at Kenwood, correct? You rewrote your
12:25:33 17 notes?
12:25:34 18 A. Incorrect.
12:25:35 19 Q. All right. And then the next line says, Hawkins related
12:25:40 20 that he got Nathson Fields and George Carter to shoot Fuddy
12:25:43 21 because they were not known in the enabled. They used
12:25:47 22 pseudonym vehicle and a blue Cadillac. Do you see that?
12:25:49 23 A. Yes, sir.
12:25:50 24 Q. Let's look at the original note. Lot less detail, right?
12:25:54 25 Earl got Fields and Carter. Right? That's what it says?

12:25:59 1 A. Yes, sir.

12:26:00 2 Q. What was in all the white space that's been whited out on
12:26:04 3 this note, if you know?

12:26:06 4 MR. BURNS: Objection?

12:26:07 5 MR. KULWIN: I'll object, Judge.

12:26:08 6 THE COURT: So you have to lay the foundation first
12:26:12 7 that something was whited out in other words.

12:26:14 8 BY MR. LOEVY:

12:26:14 9 Q. I guess that's a question. In your notes throughout all
12:26:17 10 the other paragraphs follow closely, correct?

12:26:22 11 THE COURT: You are talking about the spacing between
12:26:24 12 the various bullet points.

12:26:25 13 THE WITNESS: It's just the way I took the notes.

12:26:27 14 BY MR. LOEVY:

12:26:28 15 Q. The question was the bottom half, there is no spacing,
12:26:33 16 correct?

12:26:33 17 A. Listen, that's the way I take the notes.

12:26:38 18 Q. Can you answer the question, sir?

12:26:40 19 MR. KULWIN: Objection. He is answering the
12:26:41 20 question.

12:26:42 21 THE COURT: He is not. The question was what the
12:26:48 22 spacing was at the bottom.

12:26:50 23 THE WITNESS: Are you saying I whited out things or
12:26:53 24 something?

12:26:54 25 MR. LOEVY: Objection, your Honor. We ask to strike

12:26:55 1 that.

12:26:55 2 THE WITNESS: I'm sorry.

12:26:57 3 BY MR. LOEVY:

12:26:57 4 Q. The question is isn't it true there is a dash with nothing
12:27:02 5 on paper and then below this there is three lines that don't
12:27:07 6 have text. Can we agree on that?

12:27:09 7 A. Yes, that's in that note.

12:27:11 8 Q. All right. The next line of the original note says Fuddy
12:27:15 9 had shot James, an El Rukn two or three weeks earlier. Do you
12:27:19 10 see that?

12:27:19 11 A. Yes, sir.

12:27:20 12 Q. And on the rewritten note, Hawkins said --

12:27:29 13 MR. KULWIN: Objection to rewritten, Judge.

12:27:31 14 THE COURT: Overruled.

12:27:32 15 BY MR. LOEVY:

12:27:32 16 Q. Hawkins said he was across the street at 706 east 39th
12:27:37 17 while Carter and Fields shot Fuddy and a friend. Stayed in
12:27:42 18 the vehicle, that's what it says?

12:27:43 19 A. That's not a rewritten note. I would have to say no.

12:27:48 20 Q. All right.

12:27:50 21 A. On everything.

12:27:51 22 Q. At the bottom here, it says the hit ordered by Earl
12:27:57 23 through general banks in your original note, right?

12:28:00 24 A. Yes, sir.

12:28:04 25 Q. Okay. In your rewritten note, it doesn't say that, does

12/01/16 AM

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130

12:28:09 1 it?

12:28:12 2 MR. KULWIN: Objection to rewritten. The witness has
12:28:14 3 already said it wasn't.

12:28:15 4 THE COURT: Rephrase --

12:28:16 5 THE WITNESS: I have to say no.

12:28:18 6 THE COURT: Rephrase the question. Excuse me. I'm
12:28:21 7 talking. Rephrase the question.

12:28:22 8 BY MR. LOEVY:

12:28:23 9 Q. You had one and only one interview with Anthony Sumner
12:28:25 10 isn't that correct, sir?

12:28:26 11 A. No, that is incorrect.

12:28:28 12 Q. Do you remember being -- giving testimony in this case at
12:28:48 13 a hearing in April 16th, 2014, and being asked this question
12:28:51 14 and giving this answer. This is page 1550, lines 15 to 20.

12:28:59 15 "QUESTION: Now you said you only met with Mr. Sumner
12:29:02 16 on one day; is that correct?

12:29:03 17 "ANSWER: Well, the only time I ever interviewed him
12:29:06 18 about one case, any case was 14 May 1985.

12:29:09 19 "QUESTION: You did meet Mr. Sumner on other occasions?

12:29:14 20 "ANSWER: No, I didn't. I saw him a couple times but I
12:29:16 21 never spoke to him about any cases

12:29:18 22 "QUESTION: So this was your only interview of
12:29:21 23 Mr. Sumner?

12:29:22 24 "ANSWER: Yes. Yes, ma'am.

12:29:24 25 Did you give that answer, sir

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12:29:25 1 MR. BURNS: Objection, Judge, not impeaching

12:29:27 2 BY MR. LOEVY:

12:29:27 3 Q. This was your only interview of Mr. Sumner, yes, ma'am?

12:29:31 4 THE COURT: What's the objection?

12:29:32 5 MR. BURNS: .

12:29:34 6 THE COURT: The objection is overruled.

12:29:35 7 THE WITNESS: I said I interviewed him that one day.

12:29:39 8 It wasn't I went and talked to him one time. I interviewed

12:29:42 9 him one day throughout the day.

12:29:46 10 MR. LOEVY: All right.

12:29:47 11 THE COURT: We will stop there.

12:29:48 12 MR. LOEVY: Can I ask one more question?

12:29:50 13 THE COURT: Yeah.

12:29:51 14 BY MR. LOEVY:

12:29:51 15 Q. Was he changing his story throughout the day?

12:29:54 16 A. No, I was getting a better version of it talking to him.

12:29:57 17 Q. Better?

12:29:58 18 A. I was getting a clearer account of what's going on.

12:30:00 19 Q. Like the fact that Nate confessed, it got clarified?

12:30:04 20 MR. BURNS: Objection, your Honor.

12:30:04 21 THE COURT: Sustained. Argumentative.

12:30:06 22 We are going to break for lunch right here. I have

12:30:08 23 one other case as I said at 1:30. I'm hoping it will take

12:30:12 24 five or ten minutes. There is a chance it might take a little

12:30:15 25 bit more than that. Be ready to go at 1:35 or so. (The jury

12/01/16 AM

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132

12:31:06 1 leaves the courtroom.)

12:31:06 2 THE COURT: Anything we got to talk about before
12:31:12 3 stopping?

12:31:13 4 MR. LOEVY: Not from plaintiff, your Honor.

12:31:15 5 THE COURT: Okay. Fine. See you at -- be ready to
12:31:18 6 go at about 1:35 just like I told the jury.

12:31:21 7 (The trial was adjourned at 12:30 until 1:35 p.m. of this
12:31:27 8 same day and date.)

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